Supreme Court, U.S.
FILED

94 211 AUG - 5 1994

NO. 94-211

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

BENTON MUSSLEWHITE,
THE LAW OFFICES OF BENTON MUSSLEWHITE,
AND PETER MANANGKALANGI,
Petitioners,
v.
READING & BATES PETROLEUM COMPANY,
READING & BATES EXPLORATION CO., AND
READING & BATES DRILLING CO.,
Respondents.

**Corrected Petition For Writ Of Certiorari
To United States Court Of Appeals
For The Fifth Circuit**

CORRECTED
PETITION FOR WRIT OF CERTIORARI

Benton Musslewhite
1250 Lyric Office Center
440 Louisiana
Houston, Texas 77002
Telephone (713)222-2288
Facsimile (713)222-0319

Pro Se/Lead Counsel for
Petitioners

Alpha Law Brief Company • Houston, Texas • (713) 981-9000 • 1-800-981-9001

49 pp

Questions Presented

Prior to this Court's opinion in *American Dredging v. Miller*, 114 S.Ct. 981 (1994), a federal district court enjoined the plaintiff and his attorney from "prosecuting" a state court maritime action because the federal court had previously dismissed a similar action on ground of forum non conveniens. While *Miller* was pending, the plaintiff's attorney moved to prevent dismissal of the state court action by filing a motion to retain. A federal district court found this retention motion a contempt of the underlying injunction and ordered the plaintiff's attorney confined in prison unless he agreed to dismiss his client's state court action. Thus, this petition raises two questions of significant conflict and exceptional importance:

1. Does a federal court have the power, consonant with due process, federalism, and the Anti-Injunction Act, to issue a contempt order which orders an attorney to dismiss his client's case in state court or go to jail?

2. Whether, if a federal court has such power, a federal court abuses such power when the court fails simply to continue the injunction in effect, without imposing contempt punishment, while the legal basis for issuing the injunction is under review by this Court, when it fails to recognize substantial compliance, enforces ambiguous orders, and modifies the injunction in the contempt hearing?

LIST OF PARTIES

Petitioners/Appellants/Defendants

Benton Musslewhite
The Law Office of Benton Musslewhite
Peter Manangkalangi

Respondents/Appellees/Plaintiffs

Reading & Bates Petroleum Company
Reading & Bates Exploration Co.
Reading & Bates Drilling Co.

Table of Contents

Questions Presented i

List of Parties ii

Table of Authorities iii

Opinions Below 1

Jurisdiction 2

Constitutional Provisions and Statutes 2

Statement of the Case 2

Reasons for Granting the Writ 6

I. The Fifth Circuit's Opinion Is In Direct Conflict With Numerous Circuits In Exceeding A Federal Court's Contempt Power 6

A. The Federal Court's Contempt Order, Ordering The Petitioner To Dismiss His Client's State Court Case Or Go To Jail, Violated Due Process 7

B. The Federal Court's "Dismissal" Mandate Violates Principles of Federalism 11

II. The Fifth Circuit Opinion Is In Direct Conflict With Those Circuits Which Would Hold That The Contempt Orders Are An Abuse Of Discretion 13

Conclusion 16

Appendix A 1a

Appendix B 3a

Appendix C 5a

Appendix D 8a

Appendix E 11a

Appendix F 13a

Appendix G 22a

Appendix H 23a

Appendix I 24a

Table of Authorities

Cases **Page(s)**

Armstrong v. Executive Office of President,
1 F.3rd 1274 (D.C. Cir. 1993) 8, 10

American Dredging v. Miller,
114 S.Ct. 981 (1994) . . . . . i, 4, 11, 13

Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Engineers, Engineers, 398 U.S. 281 (1970) 11, 12

Balla v. Idaho State Board of Corrections,
869 F.2d 461 (9th Cir, 1989) 25

Chick Kam Choo v. Exxon,
486 U.S. 140 (1988) 3, 11

Common Cause v. NRC,
674 F.2d 921 (D.C. Cir. 1982) 8, 10

Dow Chemical Co. v. Alfaro,
786 S.W.2d 674 (Tex. 1990) 5

Drywall Tapers and Painters of Greater N.Y. Local 1974 v. Local 530 of Operative Plasterers and Cement Masons Int'l Assn.,
889 F.2d 389, 395 (2d Cir. 1989) cert. den.
110 S.Ct. 1478 (1990) 10

Epstein Family Partnership v.K-Mart Corp.,
13 F.3d 762, 771 (3rd Cir. 1994) 10

Exxon Corp. v. Chick Kam Choo,
817 F.2d 302 (5th Cir. 1987) rev'd on other
grounds, 486 U.S. 140 (1988) 3

Ferrell v. Pierce,
785 F.2d 1372, 1378 (7th Cir. 1986) 10

Ikospentakis v. Thalassic Steamship Agency,
918 F.2d 176 (5th Cir. 1990) 3

Inmates of the Allegheny County Jail v. Wecht,
754 F.2d 120, 129 (3rd Cir. 1985) 10

In re Cobb, 88 Bankr. Rep.
119 (Bankr. W.D., Tex. 1988) 8

Int'l Ass'n of Machinists & Aerospace Workers v.
Eastern Airlines, Inc., 849 F.2d 1481 (D.C. Dir.
1988) 10, 15

Int'l Longshoremen's Ass'n. v. Philadelphia Marine
Trade Ass'n, 389 U.S. 75 (1967) 7, 10

Jacobson & Co. v. Armstrong CorkCo.,
548 F.2d 438, 441 (2nd Cir. 1977) 10

Keyes v. School Dist. No. 1, Denver, Col.,
895 F.2d 659, 668 (10th Cir. 1990) 10

Middlesex County Ethics Committee v. Garden
State Bar Ass'n, 457 U.S. 423 (1982) 12

Milkwagon Drivers Union of Chicago v.
Meadowmoor Dairies, Inc., 312 U.S. 287 (1941) 13

NBA Properties, Inc. v. Gould,
895 F.2d 30 (1st Cir. 1990)
(Breyer, J.) 8, 9, 10, 15

Parsons Steel, Inc. v. First Ala. Bank,
474 U.S. 518, (1986) 12

Pasadena City Bd. of Educ. v. Sprangler,
427 U.S. 434, 437 (1976) 14

Pennzoil Co. v. Texaco,
481 U.S. 1 (1987) 12

Project B.A.S.I.C. v. Kemp,
947 F.2d 11, 16 (1st Cir. 1991) 8, 10, 15

Reading & Bates Petroleum Co.,
et al v. Benton Musslewhite,
et al, 14 F.3d 271 (5th Cir. 1994) 6, 12

Reed v. Cleveland Bd. of Educ.,
607 F.2d 749, 752 (6th Cir. 1979) 10

Rufo v. Inmates of Suffolk County
Jail, 427 U.S. 424, 437 (1992) 15

Shillitani v. U.S.,
384 U.S. 364, 371 (1966) 15

Spallone v. U.S.,
493 U.S. 265 (1990) 15

Sterling Drug, Inc. v. Bayer A.G.,
14 F.3d 733, 748 (2nd Cir. 1994) 10

System Fed'n No. 91 Employees' Dept. AFL-CIO v. Wright, 364 U.S. 642, 647-652 (1961) 14

Topalian v. Ehrman, 3 F.2d 931 (5th Cir. 1993) 16

U.S. v. Alexander, 981 F.2d 250 (5th Cir. 1993) 16

U.S. v. O'Quinn, 913 F.2d 221 (5th Cir. 1990) 16

U.S. v. Swift & Co., 286 U.S. 106, 115 (1932) 14

U.S. v. U.M.W., 330 U.S. 258, 294-295 (1947) 14

U.S. v. United Shoe Machinery Corp., 391 U.S. 244 (1968) 14

Constitutional Provisions and Statutes

U.S. CONST., amend. V. and XIV 2

28 U.S.C. § 1254(1) 2

Anti-Injunction Act, 28 U.S.C. § 2283 2

NO. 94-211

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

BENTON MUSSLEWHITE,
THE LAW OFFICES OF BENTON MUSSLEWHITE,
AND PETER MANANGKALANGI,
Petitioners,

v.

READING & BATES PETROLEUM COMPANY,
READING & BATES EXPLORATION CO., AND
READING & BATES DRILLING CO.,
Respondents.

Corrected Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

CORRECTED
PETITION FOR WRIT OF CERTIORARI

Petitioners, Benton Musslewhite, The Law Offices of Benton Musslewhite, and Peter Manangkalangi, file this petition and brief to urge the Court to grant certiorari and review of the decisions below.

Opinions Below

The opinion of the U.S. Court of Appeals for the Fifth Circuit is unreported and is reproduced at App. B, pp. 3a, 4a.

The contempt orders and judgments of the United States District Court for the Southern District of Texas are also unreported and are reproduced at Apps. C, pp. 5a-7a and D, pp. 8a-10a.

The underlying injunction judgment is unreported and is reproduced at App. E, pp. 11a, 12a, with the underlying injunctive order being reproduced at App. F, pp. 13a-21a

Jurisdiction

This Court has jurisdiction to review a final judgment of a court of appeals pursuant to 28 U.S.C. § 1254(1). The final judgment was issued May 9, 1994, and the petition for panel rehearing was denied on June 16, 1994. The order denying such rehearing is reproduced at App. A, pp. 1a, 2a.

Constitutional Provisions and Statutes

This case involves the due process requirements of the U.S. CONSTITUTION, amend. V and XIV; the Anti-Injunction Act, 28 U.S.C. § 2283; and Rule 65(d) of the F.R.C.P. The full text of these provisions is reproduced at Apps. G, p. 22a; H, p. 23a and I, p. 24a.

Statement of the Case

This petition questions the limits of a federal court's power to order an attorney to dismiss his client's state court case or go to jail.

This case arose on June 21, 1977, when Peter Manangkalangi was severely injured during offshore oil well workover operations in the Java Sea, Indonesia. Mr. Manangkalangi first filed suit in federal court against the

Respondents, all United States corporations. That federal action was dismissed on the ground of forum non conveniens.

Mr. Manangkalangi, through his attorney, Benton Musslewhite, then filed suit in the Texas state court. Respondents removed the suit to federal court and the federal court remanded. Respondents then filed an action in federal court to enjoin the prosecution of the state court suit by Mr. Manangkalangi and his attorney, Mr. Musslewhite. Such new federal action was abated pending this Court's decision in *Chick Kam Choo v. Exxon*, 486 U.S. 140 (1988)[1]. After *Choo* was decided by this Court, the district court then addressed the question of issuing an injunction. Because *Choo* did not decide the issue of whether federal forum non conveniens law preempts state forum non conveniens law in state maritime actions, the district court relied upon the then-existing law of the Fifth Circuit and held that Mr. Manangkalangi's state action was preempted.[2] The district

---

[1] *Chick Kam Choo* was based on almost identical facts. This Court dissolved the federal injunction over the state court suit, but did not decide whether the federal forum non conveniens doctrine preempted the subsequent maritime action in state court. Following this Court's recent opinion in *American Dredging Co. v. Miller*, 114 S.Ct. 981(1994), which held that federal forum non conveniens does not preempt state forum non conveniens law in maritime actions, the Texas Supreme Court upheld Madame Choo's right to bring her action in the Texas state court. *Exxon Corp. v. Choo*, 37 Tex.Sup.Ct.J. 914 (June 8, 1994).

[2] The Court observed that "the Fifth Circuit..... has ruled contrary to the Texas court in determining that 'federal maritime defense of forum non conveniens is constitutionally supreme in a maritime or Jones Act case over state laws that do not recognize this doctrine.' Ikospentakis, 918 F.2d at 180 (Ikospentakis v. Thalassic Steamship Agency, 918 F.2d 176 (5th Cir. 1990)), citing and endorsing its earlier holding in Exxon Corp. v. Chick Kam Choo, 817 F.2d 302 (5th Cir. 1987), rev'd on other grounds, 486 U.S. 140 (1988).....{T]his Court, which is bound to follow the Circuit, must conclude that Plaintiffs' (the Reading & Bates parties)

court then entered the following "permanent injunction":

> Defendants Peter Manangkalangi and his attorneys are PERMANENTLY ENJOINED from *prosecuting* Cause No. 83-75297 in the 164th Judicial District of Harris County, Texas or any claims arising from injuries suffered by Peter Manangkalangi on the offshore oil well workover operation in the Java Sea, Indonesia on June 21, 1977 in any state or federal court in this country.

Apps. E and F, pp. 11a, 12a, 23a; emphasis ours.

The state court proceedings lay dormant for over a year and a half. On June 28, 1993, the state court issued an order to show cause why the action should not be dismissed for want of prosecution. Although the state action was still stayed, Respondents moved, on July 2, 1993, for dismissal of the state court action. Before the time to reply to Respondents' motions had elapsed, the state court inadvertently dismissed the state court action.

Mr. Manangkalangi's attorney, Mr. Musslewhite, in an effort to preserve the status quo, filed a motion to retain the state court action[3]. Mr. Musslewhite's motion requested *only* that the state court action be retained on the docket pending the dispositive resolution of the preemption issue in

---

motion for summary judgment and permanent injunction should be granted." App. F.

[3] The motion was styled Motion for New Trial, Rehearing, to Reconsider Dismissal and to Reinstate. See TEX.R.CIV.P. 165a. It included a specific request that the state court, once it reinstated, stay the proceedings in deference to the federal injunction.

American Dredging Co. v. Miller, 114 S.Ct. 981 (1994)[4]. Petitioners also filed a Rule 60(b) motion in federal court requesting the court to stay the proceedings pending this Court's decision in *Miller*.

On September 28, 1993, the state court vacated its improvident dismissal and reinstated the state action. On October 7, 1993, Respondents filed a motion in federal district court requesting that Petitioners be held in contempt of the injunction order for filing the retention motion in state court.

On December 10, 1993, the federal court held that the Petitioners filing of the retention motion constituted "prosecution" of the state court action and found Mr. Musslewhite in contempt of court. To purge the contempt, the federal court ordered Mr. Musslewhite to withdraw the retention motion in state court, to take actions necessary to dismiss the state case, and to pay Respondents' attorneys' fees and expenses.

On December 20, 1993, the federal court held a second hearing. At that hearing, Mr. Musslewhite explained that he was bound by ethical rules not to dismiss his client's case without his consent and that he had not been able to

---

[4] *Miller* was not decided until February 23, 1994. *Miller* held that a federal forum non conveniens dismissal does not preempt a state maritime action. Thus, the *Miller* decision makes inescapable the conclusion that the original injunction entered in this case is without legal foundation.

secure his consent.[5] Mr. Musslewhite also argued that the filing of a retention motion to preserve the status quo was not "prosecution" of the state action.

The federal court found Mr. Musslewhite's failure to withdraw the retention motion and effect a dismissal violated the original injunction and the first contempt order. App. D, 8a-10a. The court ordered Mr. Musslewhite to be confined in jail, beginning December 22, 1993, until he purged himself of contempt by dismissing the state court action.

The Petitioners appealed the federal court's two contempt orders and the orders were stayed. See *Reading & Bates Petroleum Co., et al v. Benton Musslewhite, et al*, 14 F.3d 271 (5th Cir. 1994). On May 9, 1994, the Fifth Circuit affirmed without opinion. App. B, pp. 3a, 4a. On June 16, 1994, the Fifth Circuit denied Petitioners' request for panel rehearing and suggestion for rehearing en banc. App. A.

On July 7, 1994, the Fifth Circuit stayed the mandate until August 6, 1994, pending filing of this petition.

Reasons for Granting the Writ

I. The Fifth Circuit's Opinion Is In Direct Conflict With Numerous Circuits In Exceeding A Federal Court's Contempt Power

---

[5] Even despite this Court's favorable disposition of the preemption issue in *Miller*, dismissal of the state action would be irretrievably prejudicial to Mr. Manangkalangi. The state action was filed at a time when the Texas "open court" statute, Sec. 71.031 of Texas Civil Practices and Remedies Code, permitted his suit. *See Dow Chemical Co. v. Alfaro*, 786 S.W.2d 674 (Tex. 1990). However, in 1993 the Texas legislature enacted Section 71.051 of the Texas Civil Practice & Remedies Code (effective September 1, 1993), which would probably bar his suit. Section 71.051 applies *only* to suits filed after the effective date.

The Fifth Circuit below affirmed the action of a federal district court which ordered an attorney to dismiss his client's state court case or go to jail. This contempt power which the federal court wielded below far exceeded the limits of a federal court's authority. The federal court's contempt orders violated the most basic tenets of due process, federalism, abstention and the Anti-Injunction Act.

A review of significant decisions reveals that the Fifth Circuit's opinion creates a significant conflict with other Circuits and with this Court and presents an exceptionally important issue with regard to the interplay between federal and state courts. This petition offers the Court the unique opportunity to address the limits of a federal court's power over state court actions.

A. The Federal Court's Contempt Order, Ordering the Petitioner to Dismiss His Client's State Court Case Or Go To Jail Violated Due Process

Perhaps the most dangerous power possessed by federal judges in civil cases is the contempt power. It is a power whose abuses must be regularly checked. Justice Stewart, speaking for the Court in 1967, wrote:

> The judicial contempt power is a potent weapon. When it is founded upon a decree too vague to be understood it can be a deadly one.

Int'l Longshoremen's Ass'n. v. Philadelphia Marine Trade Ass'n, 389 U.S. 75, 76 (1967).

In this case, Mr. Musslewhite and his client were enjoined from "prosecuting" the state court case. Mr. Musslewhite made no attempt to "prosecute" the state court case. Rather, he merely filed a retention motion to preserve

the status quo in a state court case, pending resolution of the preemption issue upon which the injunction was based. When Mr. Musslewhite filed the retention motion, the federal court held him in contempt of the original "prosecuting" injunction and modified the injunction by ordering him to dismiss the state court case or go to jail. The Fifth Circuit's affirmance of these contempt orders raises a number of due process concerns.

First, the opinion below conflicts with numerous decisions which require that the injunction specify precisely what acts are forbidden. *See e.g. Armstrong v. Executive Office of President*, 1 F.3rd 1274, 1289 (D.C. Cir. 1993);[6] and *NBA Properties, Inc. v. Gould*, 895 F.2d 30, 32 (1st Cir. 1990) (Breyer, J.). The injunction order must be clear and unambiguous. *Int'l Longshoremen's Ass'n.*, 389 U.S. at 76. Any ambiguity is resolved in favor of the person charged with contempt. *NBA Properties, Inc.*, 895 F.2d at 34; *Project B.A.S.I.C. v. Kemp*, 947 F.2d 11, 16 (1st Circ. 1991). If an injunction order does not specify precisely what acts are forbidden, the person has not received adequate notice and due process is not satisfied. *See Common Cause v. NRC*, 674 F.2d 921, 927 (D.C. Cir. 1982).

Here, the injunction order did not define "prosecution." Neither Mr. Musslewhite nor his client were on notice that "prosecution" included retention of the case on

---

[6] The Court in Armstrong noted:

> ...Thus, because the appellants were never directly ordered to promulgate new regulations, we must reverse the district court's contempt finding which was based in part on their failure to do so.

1 F.3d at 1289.

the state court docket in abatement until *Miller* was decided. In fact, in the most analogous context, retention of a case which is up for dismissal on a state court docket is *not* "prosecution" which violates the automatic stay injunction in bankruptcy. *See In re Cobb*, 88 Bankr. Rep. 119 (Bankr. W.D., Tex. 1988). Because Mr. Musslewhite has been found in contempt of an ambiguous order, due process would seem to require that the contempt orders be vacated. This is a question that deserves, we respectfully submit, the attention of this Court.

Second, the federal court exceeded its powers by converting a prohibitory injunction into a mandatory injunction in the context of a contempt proceeding. Again, the underlying injunction in this case only "prohibited" prosecution; it did not "mandatorily" require dismissal; in fact, it did not even mention "dismissal" vis-a-vis the state court action. Not only did the federal court hold Mr. Musslewhite in violation of the first order, but the federal court also modified the injunction in the contempt proceedings by "mandating" Mr. Musslewhite to dismiss his client's state court case or go to jail.

These orders conflict with those opinions which hold that negative "prohibitions" cannot be changed into affirmative and "mandatory" obligations in the context of contempt proceedings. *See e.g. NBA Properties, Inc.*, 895 F.2d at 33 (citing authorities).[7] Further, these orders

---

[7] In striking down an order holding the "Franchisors" in contempt for failing to affirmatively police their franchisees in order to ensure that they did not sell products with NBA marks, in violation of a court-approved settlement agreement, Judge Breyer, on behalf of the First Circuit, stated:

> To find conduct that amounts to the forbidden "enabling" would amount to reading the Decree, phrased in terms of negative

conflict with those opinions which hold that a federal court cannot modify a prior injunction in the subsequent contempt hearing, without weighing relevant criteria or making factual findings. *See e.g. Int'l Ass'n of Machinists & Aerospace Workers v. Eastern Airlines, Inc.*, 849 F.2d 1481, 1486-87 (D.C. Dir. 1988).

The enforcement of an ambiguous injunction and the modification of that injunction in the contempt hearing, to require dismissal of a state court case, violates due process. This is a question of constitutional significance that, we submit, should be examined by the Court. Moreover, the Court should resolve the clear conflict between the Fifth Circuit in this case, on the one hand, and the First (*NBA Properties* and *Project B.A.S.I.C.*); D.C. (*Armstrong* and *Common Cause*); Second (*see Jacobson & Co. v. Armstrong Cork Co.*, 548 F.2d 438, 441 (2nd Cir. 1977), *Drywall Tapers and Painters of Greater N.Y. Local 1974 v. Local 530 of Operative Plasterers and Cement Masons Int'l Assn.*, 889 F.2d 389, 395 (2d Cir. 1989) cert. den. 110 S.Ct. 1478 (1990) and *Sterling Drug, Inc. v. Bayer A.G.*, 14 F.3d 733, 748 (2nd Cir. 1994)); Seventh (*see Ferrell v. Pierce*, 785 F.2d 1372, 1378 (7th Cir. 1986)); Third (*see Inmates of the Allegheny County Jail v. Wecht*, 754 F.2d 120, 129 (3rd Cir. 1985) and *Epstein Family Partnership v. K-Mart Corp.*, 13 F.3d 762, 771 (3rd Cir. 1994)); Sixth (*see Reed v. Cleveland*

---

prohibitions, as if it imposed an affirmative obligation upon the Franchisors to police their franchisees. To do so would turn a "prohibitory" injunction into a "mandatory" injunction.....and, as we have previously said, we can find no legal basis for reading the Decree's language so broadly.

895 F.2d at 33.

Bd. of Educ., 607 F.2d 749, 752 (6th Cir. 1979)); and Tenth (*see Keyes v. School Dist. No. 1, Denver, Col.*, 895 F.2d 659, 668 (10th Cir. 1990)) Circuits, on the other hand.[8]

B. The Federal Court's "Dismissal" Mandate Violates Principles of Federalism

This case highlights one of the central concerns of federalism -- that federal courts cannot interfere with state court proceedings. Congress emphasized this concern by enactment of the so-called Anti-Injunction Act, 28 U.S.C. § 2283; *see Chick Kam Choo v. Exxon*, 486 U.S. at 145-151 (extended discussion of history and impact of Anti-Injunction Act on principles of federalism).

In this case, a federal court has ordered an attorney to dismiss his client's state court case. If such an order is condoned in this case, there will be nothing to prevent federal courts from issuing future orders of dismissals of other state court cases. It is easy to imagine that federal courts may use such new-found power to prevent litigation of unpopular, political or regional causes.

That is exactly what has happened here. The federal court below has sought to impose its forum non conveniens dismissal upon a state court which did not recognize the doctrine of forum non conveniens. Even though the state court had already decided to retain the case on its docket pending this Court's decision in *American Dredging Co. v.*

---

[8] One of the rationale for all these decisions is the heavy burden upon federal courts, in issuing injunctive orders, to strictly comply with the requirements of Rule 65(d) that the injunction "shall set forth the reasons for its issuance; shall be specific in its terms; shall describe in reasonable detail....the act or acts sought to be restrained." See *International Longshoremen Assn.*, 389 U.S. at 75, 76.

Miller, the federal court chose to interfere with state court authority under the harshest power imaginable -- the threat to the attorney of loss of liberty.[9]

These "dismiss the state court case or go to jail" orders strike at the heart of federalism. It matters not whether the federal court orders the state court to dismiss the action, or whether the federal court orders the attorney to effect dismissal of the state court action -- the result is the same. This Court has long preserved the rights of state courts to conduct their own proceedings, free from federal interference. *See e.g. Pennzoil Co. v. Texaco* 481 U.S. 1 (1987); *Middlesex County Ethics Committee v. Garden State*

---

[9] Indeed, the federal district court in effect chose to "sit as an appellate court," reverse the state court's reinstatement of the state court case and order the Petitioner to dismiss the case or go to jail. As noted in *Atlantic Coast Line Ry Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 287, 296, (1970), a federal district court does not have the power to sit as an appellate court with respect to decisions of a state court, even those involving federal questions such as preemption. ("Again, lower federal courts possess no power whatever to sit in direct review of state court decisions. If the union was adversely affected by the state court's decision, it was free to seek vindication of its federal right in the Florida appellate courts and ultimately, if necessary, in this Court." 398 U.S. at 296). Thus, even if Judge Werlien felt the state court should not have reinstated because of the then extant view of the Fifth Circuit that the federal forum non conveniens dismissal preempted the state court maritime action, it had no right or power to effectively reverse the state court's reinstatement decision by ordering Mr. Manangkalangi's attorney to dismiss his case or go to jail. As was further noted in *Atlantic Coast Line*, the appropriate procedure would have been for *Reading & Bates* to take the issue up through the state court appellate system and then to this Court, as was the precise procedure employed in *American Dredging*. Moreover, concepts of full faith and credit (see the Full Faith and Credit Act, 28 U.S.C. 1738) may also suggest that the federal court should not interfere with an order or judgment of the state court. See *Parsons Steel, Inc. v. First Ala. Bank*, 474 U.S. 518 (1986).

Bar Ass'n, 457 U.S. 423 (1982); *see also Atlantic Coast Line R. Co.* 398 U.S. at 297 ("Any doubts as to the propriety of a federal injunction against a state court proceeding should be resolved in favor of permitting state courts to proceed...The explicit wording of § 2283 itself implies as much and the fundamental principle of a dual system of courts leads inevitably to that conclusion").

These concerns come into full focus when it is seen that the very injunction order which underlies these contempt orders is not valid. This Court's recent opinion in *American Dredging Co. v. Miller* confirmed that federal forum non conveniens dismissals do *not* preempt state court maritime actions. Nonetheless, despite the acknowledged reason (by both the Petitioner and the state court) for retention of the state court action and the abatement of the state court action, to await the decision in *Miller*, the federal court chose to interfere in the state court proceeding by ordering dismissal under penalty of imprisonment.

Federalism does not permit such orders. The Anti-Injunction Act does not permit such orders. The doctrine of abstention does not permit such orders. The federal courts below have exceeded their powers and violated due process. These important issues, centered as they are upon the sacred doctrine of federalism, urgently need this Court's consideration.

II. The Fifth Circuit Opinion Is In Direct Conflict With Those Circuits Which Would Hold That The Contempt Orders Are An Abuse Of Discretion

Even if such contempt orders were within the power of federal courts and do not violate due process, the contempt orders, under the circumstances presented here, constitute an abuse of that power.

The federal courts below abused their discretion by their failure to abate the contempt hearing until *Miller* was decided and by their failure to dissolve the permanent injunction after *Miller* was decided. *See e.g. Milkwagon Drivers Union of Chicago v. Meadowmoor Dairies, Inc.*, 312 U.S. 287, 298 (1941) (permanent injunction should be dissolved or modified when there has been a change in law).[10]

The federal courts below abused their discretion by their failure to recognize Mr. Musslewhite's "substantial compliance" with the injunction. *See Balla v. Idaho State Board of Corrections*, 869 F.2d 461, 465-66 (9th Cir, 1989). Mr. Musslewhite's retention of the state court action to preserve the status quo while *Miller* was pending cannot, by any stretch of semantics, be considered "prosecution" of the case. As Mr. Musslewhite stated to the federal court, if the *Miller* decision were unfavorable he would have no problem

---

[10] See also *U.S. v. Swift & Co.*, 286 U.S. 106, 115 (1932) (Justice Cardoza expounded on how Rule 60(b)(5) codified the courts' inherent power to modify injunctions; he stated that "(a) continuing decree of injunction is subject always to adaptation as events may shape the need."); *System Fed'n No. 91 Employees' Dept. AFL-CIO v. Wright*, 364 U.S. 642, 647-652 (1961) (this case, involving the modification of an injunction based on "a change in decisional law", is very much like the present one with respect to whether the federal district court should, in view of this Court's decision in *Miller*, dissolve the injunction in this case pursuant to Rule 60(b)(5)); *Pasadena City Bd. of Educ. v. Sprangler*, 427 U.S. 434, 437 (1976) (discussing how a "final" or "permanent" "decree in equity", even though not appealed, is always subject to modification of the terms [thereof]....when the circumstances, whether of law or fact, obtaining at the time of its issuance have changed...."); *U.S. v. United Shoe Machinery Corp.*, 391 U.S. 244 (1968); *Rufo v. Inmates of Suffolk County Jail*, 427 U.S. 424, 437 (1992); and *U.S. v. U.M.W.*, 330 U.S. 258, 294-295 (1947) ("the right to remedial relief falls with an injunction which events prove was erroneously issued").

dismissing the action. The problem here is that the Respondents, fearful of the decision in *Miller*, moved for a premature dismissal of the state court action. Mr. Musslewhite had no intention to "prosecute" the action, in any affirmative sense, until *Miller* was decided in his client's favor and until the federal injunction was dissolved.

The federal courts below also abused their discretion by enforcing an ambiguous injunction. *See NBA Properties*, 895 F.2d at 32-33. And, the federal courts below abused their discretion by enforcing a modification of the injunction in the contempt proceeding, to affirmatively and "mandatorily" order dismissal when the underlying injunction was "prohibitory" only. *See Int'l Ass'n of Machinists*, 849 F.2d at 1486-87, and *NBA Properties*, 895 F.2d at 33.

Finally, the courts below - in ordering the most extreme of contempt sanctions (dismiss or go to jail) when such sanctions were patently unnecessary to "achieve the end" in question (the "end" in this case being to prevent litigation of the state court suit on its merits until this Court decided *Miller*) -acted in conflict with the decisions of this Court and other circuit courts. *See Spallone v. U.S.*, 493 U.S. 265, 275, 280 (1990); *Shillitani v. U.S.*, 384 U.S. 364, 371 (1966); and *Project B.A.S.I.C.*, 947 F.2d at 16. As observed in *Project B.A.S.I.C.*:

> Recognizing the contempt power's virility and damage potential, courts have created a number of prudential principles designed to oversee its deployment. For one thing, in levying contempt sanctions, the court must exercise the least possible power suitable to achieve the end proposed.

947 F.2d at p. 16.

The contempt orders below represent an arbitrary and unprecedented attempt to interfere with state courts and constitute an abuse of discretion. For all the reasons stated above, we respectfully request the Court to grant writ of certiorari in order to resolve the numerous conflicts among the circuits and to define, in no uncertain terms, the limits of federal power with respect to the awesome judicial tool of civil and criminal contempt.[11] In the final analysis, a dangerous precedent indeed would be created if the Court were to leave standing a contempt order directing an attorney to go to jail and remain there until he agrees to violate his ethical duty to his client by dismissing his client's state court case.

Conclusion

The petition should be granted.

Respectfully submitted.

Benton Musslewhite
1250 Lyric Office Center
440 Louisiana
Houston, Texas 77002
Telephone (713)222-2288
Facsimile (713)222-0319

FOR HIMSELF AND
PETER MANANGKALANGI

[11] The judges of the Southern District of Texas have been especially prone to use the weapons of contempt and severe sanctions. *See e.g. U.S. v. O'Quinn*, 913 F.2d 221 (5th Cir. 1990); *Topalian v. Ehrman*, 3 F.2d 931 (5th Circ. 1993); and *U.S. v. Alexander*, 981 F.2d 250 (5th Cir. 1993).

APPENDIX A

U.S. COURT OF APPEALS
F I L E D
JUN 16 1994
CHARLES R. FULBRUGE III
CLERK
Iss'd 6-16

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2933

READING & BATES PETROLEUM CO.,
READING & BATES EXPLORATION CO., &
READING & BATES DRILLING CO.,
Plaintiffs-Appellees,

versus

BENTON MUSSLEWHITE, THE LAW OFFICES OF BENTON MUSSLEWHITE, and PETER MANANGKALANGI,
Defendants-Appellants.

Appeal from the United States District Court
for the Southern District of Texas

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion 5/9/94, 5 Cir., F.3d)

(June 16, 1994)

Before POLITZ, Chief Judge, DAVIS and WIENER, Circuit Judges.

PER CURIAM:

(x) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestion for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

/s/ Henry A. Politz
United States Chief Judge

REHG-6

CLERK'S NOTE
SEE FRAP AND LOCAL
RULES 41 FOR STAY OF THE
MANDATE.

APPENDIX B

U.S. COURT OF APPEALS
F I L E D
MAY 09 1994
CHARLES R. FULBRUGE III
CLERK

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2933

READING & BATES PETROLEUM CO., READING & BATES EXPLORATION CO. & READING & BATES DRILLING CO.,

Plaintiff-Appellee,

versus

BENTON MUSSLEWHITE, THE LAW OFFICES OF BENTON MUSSLEWHITE and PETER MANANGKALANGI,

Defendants-Appellants.

Appeal from the United States District Court for the Southern District of Texas

---

(CA-H-86-2671)

Before POLITZ, Chief Judge, DAVIS and WIENER, Circuit Judges.

PER CURIAM:*

This matter is before the court on appeal of two contempt orders entered herein by the district court. Considering the pertinent parts of the record and the briefs of the parties, and finding neither error of law nor relevant abuse of discretion, the judgments appealed are AFFIRMED.

---

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

APPENDIX C

DELIVERED DEC 15 1993
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED
DEC 14 1993
Michael N. Milby, Clerk
By Deputy: /s/ illegible

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

READING & BATES PETROLEUM COMPANY, ET AL.	§	
Plaintiffs,	§	
V.	§	CIVIL ACTION
	§	NO. H-86-2671
BENTON MUSSLEWHITE, ET AL.,	§	
Defendants.	§	

ORDER OF CONTEMPT

This matter came on to be heard on the Motion of Plaintiff Reading & Bates Petroleum Company, Reading & Bates Exploration Company, Reading & Bates Drilling Company for a judgment in contempt against Defendant Benton Musslewhite and the Law Offices of Benton Musslewhite, Individually and as Attorneys for Pete Manangkalangi. The Court, after considering the evidence and testimony presented by the parties, and arguments and authorities, dictated in open Court Findings of Fact and Conclusions of Law, finding among other things that

Defendant Benton Musslewhite, the Law Offices of Benton Musslewhite, Individually and as Attorneys for Manangkalangi, are in contempt of this Court for having failed and refused to obey the injunctive Order contained in the FINAL JUDGMENT signed in this cause by Chief Judge James DeAnda, entered March 5, 1992.

It is therefore ORDERED:

1. That Benton Musslewhite, Individually and as Attorneys for Peter Manangkalangi, purge himself of this contempt of Court by taking the following actions:

(a) Bring to the attention of the Judge of the 164th Judicial District Court of Harris County the Final Judgment of this Court above-referenced, including the injunctive order contained therein and of the need for Defendants to purge themselves of contempt of this Court by withdrawing their previous motion filed by Benton Musslewhite for reinstatement of Cause No. 83-75297 and obtaining reentry of an Order of Dismissal such as that entered by the state district court on July 15, 1993.

(b) Fully and completely comply with all provisions of the Court's Final Judgment entered March 5, 1992, by causing Cause No. 83-75297 in the 164th Judicial District Court of Harris County, Texas, to be DISMISSED and to CEASE and DESIST in prosecuting any claims which Defendants are prohibited by said Final Judgment from prosecuting in any state or federal court in this country.

(c) File with this Court no later than December 17, 1993, a sworn statement in this matter setting forth the steps that have been taken in order to purge Defendants of contempt, to obtain the reversal of the Order reinstating the state cause No. 82-75297, which had granted Defendants' state court motion that had been filed in contempt of this Court, and to obtain dismissal of that action.

(d) Reimburse Plaintiffs for all attorneys' fees and costs of litigation incurred in this cause in connection with this contempt proceeding. Plaintiffs' counsel shall file and serve upon Defendants an affidavit of such attorneys' fees and costs no later than December 17, 1993; but Plaintiffs' Motion for Costs and Attorneys' Fees incurred in Cause No. 83-75297 in the 164th Judicial District Court of Harris County, Texas, is DENIED.

2. That in the event the above orders have not been complied with on or before December 17, 1993, then a hearing will be held before this Court in Courtroom 9D, United States Courthouse, 515 Rusk Street, Houston, Texas on December 20, 1993, at 9:00 a.m., in order that Defendants may show cause why this Order has not been complied with, and why further sanctions should not be imposed to compel Defendants to purge themselves of contempt.

3. That the parties shall promptly notify the Court as soon as the above Orders have been complied with so that the setting for December 20, 1993, can be canceled.

SIGNED this 13th day of December. 1993.

/s/ Ewing Werlein, Jr.
EWING WERLEIN, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

READING & BATES	)(	
PETROLEUM CO.,	)(	
ET AL,	)(	
Plaintiffs	)(	
	)(	C.A. NO.
VS.	)(	H-86-2671
	)(	
PETER	)(	
MANANGKALANGI,	)(	
ET AL,	)(	
Defendants	)(	

ORDER OF CONTEMPT

On the 20th day of December came on for further hearing and consideration the Motion of Plaintiffs Reading & Bates Petroleum Company, and others, for a judgment of contempt against Defendant Benton Musslewhite ("Musslewhite") and the Law Offices of Benton Musslewhite, Individually and as Attorneys for Peter Manangkalangi. After hearing and considering additional evidence regarding Musslewhite's conduct in the days following this Court's Order signed December 13, 1993, and hearing and considering the arguments and authorities presented by counsel, the Court finds from clear and convincing evidence, received both at the hearing on December 13, 1993 and on December 20, 1993, that Musslewhite is in contempt of this Court for having failed and refused to obey the injunctive Order contained in the Final Judgment signed in this case by Chief Judge James DeAnda, entered March 5, 1992; that

Musslewhite specifically violated the permanent injunction against his prosecution of Cause No. 83-75297 in the 164th Judicial District Court of Harris County, Texas, by filing in that action a "Motion for New Trial, Rehearing, To Reconsider Dismissal Order and to Reinstate this Case," and that Musslewhite filed the foregoing motion after the state judge had dismissed No. 83-75297 on July 15, 1993. The first step in the prosecution of any lawsuit is to file the lawsuit. Musslewhite successfully moved to reinstate No. 83-75297 as a pending case on the docket of the state district court after it had been dismissed. Such is an act of prosecution of the case that is in direct violation of the permanent injunction contained in the Final Judgment entered by Chief Judge DeAnda.

This Court's Order signed December 13, 1993, ordered Musslewhite to purge himself of such contempt and allowed a reasonable time for him, without further contempt and allowed a reasonable time for him, without further sanctions, to effect the restoration of the status quo ante Musslewhite's contempt. Musslewhite has failed and refused to purge himself of such contempt, and it continues in direct violation of the Final Judgment of this Court entered March 5, 1992. Accordingly, it is ORDERED that Respondent Benton Musslewhite report to the office of the United States Marshall for the Southern District of Texas, 10th Floor, U.S. Courthouse, Houston, Texas 77002, at 8:00 A.M. on Wednesday, December 22, 1993, to be held in custody from 8:00 A.M. until 5:00 P.M. on that day; and that Respondent Benton Musslewhite continue to report to the U.S. Marshall in such manner at 8:00 A.M. on each and every business day thereafter (Saturdays, Sundays, and legal holidays of the United States excepted), to be held in custody from 8:00 A.M. until 5:00 P.M. on each such day continuously until Respondent Benton Musslewhite shall have purged himself of contempt by securing restoration of the status quo ante his

act of contempt, that is, by securing reinstatement of the order of dismissal of Cause No. 83-75297, such as had been entered by the state court on July 15, 1993, whereupon this Court will release him from the personal custody requirements of this Order.

Respondent Benton Musslewhite's Motion to Stay this Order pending his appeal thereof to the U.S. Court of Appeals for the Fifth Circuit is DENIED.

The Clerk will enter this Order, providing a correct copy to all counsel of record.

SIGNED at Houston, Texas, this 21st day of December, 1993.

/s/
EWING WERLEIN, JR.
U.S. DISTRICT JUDGE

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

READING & BATES	)(	
PETROLEUM CO.,	)(	
ET AL,	)(	
Plaintiffs	)(	
	)(	C.A. NO.
VS.	)(	H-86-2671
	)(	
PETER	)(	
MANANGKALANGI,	)(	
ET AL,	)(	
Defendants	)(	

FINAL JUDGMENT

Pursuant to the Court's orders of January 22, 1993 and of this date, the Court

ORDERS that final summary judgment is GRANTED in favor of Plaintiffs Reading & Bates Petroleum Company, Reading & Bates Exploration Company and Reading & Bates Drilling Company against Defendant Peter Manangkalangi, Benton Musslewhite, and the Law Offices of Benton Musslewhite, individually and as attorneys for Peter Manangkalangi. The Court

ORDERS that Defendants are PERMANENTLY ENJOINED from prosecuting Cause No. 83-75297 in the 164th Judicial District Court of Harris County, Texas or any claims arising from injuries suffered by Peter Manangkalangi on the offshore oil well workover operations in the Java Sea,

Indonesia on June 21, 1977 in any state or federal court in this country. Furthermore, Defendants shall pay costs of court, as well as Plaintiffs' attorney's fees in the amount of $4,564.50, with post judgment interest in the amount of 4.21% per annum.

SIGNED this 3rd day of March 1992, at Houston, Texas.

_____

JAMES DeANDA, CHIEF JUDGE
UNITED STATES DISTRICT COUNT

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

READING & BATES PETROLEUM CO., ET AL, Plaintiffs	)(	
	)(	C.A. No.
VS.	)(	H-86-2671
PETER MANANGKALANGI, ET AL, Defendants	)(	

ORDER

Pending before the Court in the above referenced action for a permanent injunction to prevent Defendants Peter Manangkalangi and his attorneys from further prosecution of alleged claims are Plaintiffs Reading & Bates Petroleum Company, Reading & Bates Exploration Company, and Reading & Bates Drilling Company's renewed motion for summary judgment and permanent injunction and supplement to it. This case was stayed by agreement in 1986, and the underlying state court action enjoined, pending the outcome of the appeal of a related action, Chick Kam Choo v. Exxon Corp., wherein the issue was whether a federal district court may enjoin a state court admiralty proceeding from relitigating a federal choice-of-law determination made when the federal court decided to dismiss on the grounds of forum

non conveniens. Choo has been resolved[1] insofar as it relates to this action. The Court lifted the stay on this action on September 29, 1991 and reinstated it on the Court's active docket.

In Choo, a widow of a shipwright brought suit under the Jones Act, the Death on the High Seas Act (DOSHA), the general maritime law of the United States, and the Texas Wrongful Death Statutes, in federal district court for damages arising from the accidental death of her husband while he was repairing a ship. The district court three years later, in 1980, granted summary judgment to the defendants on the Jones Act claim because the deceased was not a "seaman" and on the DOSHA because the accident did not occur on the high seas but in port. The defendants also moved for a forum non conveniens dismissal and argued that because of a lack of substantial contacts with the United States and because Singapore law governed this case, the suit should be dismissed. The district court agreed and dismissed the rest of the case on forum non conveniens grounds, provided that the plaintiff file suit in Singapore. The Fifth Circuit affirmed. 699 F.2d 693 (5th Cir. 1983), cert. denied, 464 U.S. 826 (1983).

Instead, the plaintiff filed suit in Texas state court under the Texas Wrongful Death Statutes and under Singapore law. The defendants removed the suit to federal court on the basis of diversity. The Fifth Circuit ruled that diversity did not exist and returned it to the district court to remand it to state court. The defendants commenced a new suit in federal district court and obtained a permanent injunction barring plaintiff and her attorneys from suing the

---

[1] Exxon Corp. v. Chick Kam Choo, 817 F.2d 307 (5th Cir. 1987), rev'd, 485 U.S. 140 (1988), remanded to district court, 849 F.2d 910 (5th Cir. 1988).

defendants in Texas courts for damages arising out of his alleged wrongful death, i.e., for relitigating in state court any of the issues finally decided in 1980. The defendants appealed, arguing that the federal Anti-Injunction Act, 28 U.S.C. Sec. 2283, which in most cases precludes federal courts from interfering with state court proceedings, barred such an injunction. The Fifth Circuit affirmed the district court and held that the injunction was proper under the relitigation exception which allows a federal court to enjoin state court proceedings "to protect or effectuate its judgment." The Fifth Circuit also ruled that the "reverse-Erie" doctrine of uniformity,[2] established in Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207, 222-23 (1986), mandated that the federal doctrine of forum non conveniens preempts state law.

The Supreme Court subsequently dissolved the injunction, holding that it was overbroad because it barred a state court from entertaining the Singapore law claims. The relitigation exception should apply only when the issues have actually been decided by the federal court. In Choo, the peremption issue was not litigated by the district court and the claim under Singapore law was not resolved but merely dismissed because the forum was inconvenient. Furthermore application of the federal forum non conveniens doctrine does not determine whether Texas state courts are an appropriate forum for the Singapore law claims. Texas has a broad "open Courts" provision in its Constitution, Art. 1, Sec. 13, that allows filing of any suit for personal injury or death. Although the Fifth Circuit held that state law had been preempted under the "reverse-Erie" doctrine, that issue was not litigated by the district court. The Supreme Court,

---

[2] The "reverse-Erie" doctrine "requires that the substantive remedies afforded by the states conform to governing federal maritime standards." Offshore Logistics, 477 U.S. at 223.

noting that when a state court is faced with a federal issue, rules that "the proper course is to seek resolution of that issue by the state court." 108 S.Ct. at 1691. It therefore held that the defendants had to raise their argument regarding the preemptive force of federal maritime forum non conveniens before the state court entertaining the Choo suit. Finally, the high court stated that the Texas state law claims had been adjudicated when the federal district court in 1980 rules under choice-of-law authority that Singapore law governs the plaintiff's suit. Thus an injunction against relitigation of the claim under Texas law is permissible under the Anti-Injunction Act.

Since Choo was handed down, the Texas Supreme Court has held that the legislature abolished the doctrine of forum non conveniens in suits relating to death or injury occurring outside of Texas and that the statutory right to bring such suits in Texas bars dismissal of the claims on the ground of an inconvenient forum. Dow Chemical Co. v. Alfaro, 786 S.W.2d 674 (Tex. 1990), cert. denied, 111 S.Ct. 671 (1991); Tex.Civ.Prac. & Rem.Code Ann. Sec. 71.031 (Vernon 1986). Moreover the Fourteenth Court of Appeals has now reversed the state trial court's determination that Choo's Singapore law claim was preempted by federal maritime law and found that Texas state court is an available forum. Chick Kam Choo v. Exxon Corp., 1991 WL 149274 (Tex.App.--Houston [14th Dist.] 1991).

In the case before the undersigned judge Peter Manangkalangi, a citizen of Indonesia, represented by attorney Benton Musslewhite, first filed a federal civil action, H-79-1253, on June 19, 1979 for damages for an injury he suffered on offshore oil well work-over operations in the Java Sea, Indonesia. He alleged negligence and gross negligence against the Reading & Bates entities and unseaworthiness of a barge, the Giant Mariner. On

September 16, 1983, the presiding judge entered a final judgment and a memorandum and order stating that Manangkalangi did fail to state a cognizable claim under the Jones Act, the general maritime law of the United States, or other applicable American law, and that Indonesian law applies. In the order and in a conditional final judgment the Court granted Defendants' supplemental motion to dismiss for forum non conveniens, provided that a new action was instituted in Indonesia within six months and provided that Defendants agreed to submit to the jurisdiction of an Indonesian court and waive any statute-of-limitations defense. The order stated that if Defendants failed to comply, the dismissing court would resume jurisdiction over the suit. On October 13, 1983 the judgment was amended to allow Manangkalangi ninety days to refile the suit in Indonesia and stated that if he failed to do so, Defendants could move for final judgment. After he failed to do so, on Defendants' motion for entry of final judgment the court resumed jurisdiction, gave Manangkalangi an opportunity to respond, and on April 5, 1984, entered another final judgment, dismissing Manangkalangi's entire suit with prejudice on the ground of forum non conveniens.

Instead of in Indonesia, Manangkalangi refiled his suit in the 164th Judicial District of Harris County, Texas, Cause No. 83-75297, and it is still pending after a removal and a remand.

The Reading & Bates entities filed the instant suit, H-86-2671, to permanently enjoin Manangkalangi and his attorneys from pursuing the state court action, based on the All Writs Statute and the relitigation exception to the Anti-Injunction statute, 28 U.S.C. Sec. 1651 and Sec. 2283, in aid of the court's jurisdiction or to protect or effectuate the court's prior judgment and to protect Plaintiffs from repetitive litigation. The undersigned judge entered an

agreed stay order on November 26, 1986 enjoining the underlying state court action as well as staying the instant suit pending the appeal of Chick Kam Choo.

Now that the Supreme Court has ruled on Choo, Plaintiffs reurge their motion for summary judgment, arguing that this court can enjoin relitigation of issues previously ruled on in an earlier federal action involving the same action. 28 U.S.C. Sec. 1651 and Sec. 2283. Here, claim Plaintiffs, because the Court's final judgment dismissed with prejudice all of Manangkalangi's claims. the res judicata doctrine of merger, bar, and issue preclusion bar those claims and any others that Manangkalangi might raise. The Choo case held that where a final federal judgment has been entered, a federal court may protect that ruling by enjoining a state court from considering the claim[s]. 486 U.S. at 150. They thus request this Court to enjoin permanently Manangkalangi and his attorneys from prosecuting any suit in federal or state court against Plaintiffs for any injuries arising out of oil well work-over operations in the Java Sea, off of Indonesia on June 21, 1977.

Plaintiffs' supplement cites Quintero v. Klaveness, 914 F.2d 717, 722 (5th Cir. 1990), cert. denied, 111 S.Ct. 1322 (1991), for the rule that a district court has discretion to enjoin relitigation of a choice-of-law determination made pursuant to a forum non conveniens dismissal of a foreign seaman's personal injury suit and that a forum non conveniens dismissal can be granted with prejudice. The Fifth Circuit noted that the relitigation exception arose from concerns about res judicata and collateral estoppel, and was intended to bar costly and judicially wasteful relitigation of issues in state court. 914 F.2d at 720-21.

Plaintiffs also cite Ikospentakis v. Thalassic Steamship Agency, 915 F.2d 176 (5th Cir. 1990) for the proposition

that a federal holding related to a forum non conveniens dismissal preempts state decisions in maritime matters. The Court will discuss this case further infra.

Defendants contest Plaintiffs' reading of the cases they cite as authority. First, Defendants point out, and the Court agrees, that the United States Supreme Court in Choo said that the preemption issue had to be presented to the Texas state trial court, where Choo's case was pending. Defendants also cite In re: Air Crash New Orleans, 821 F.2d 1147, 1163-64 (5th Cir. 1987) (en banc) as authority for treating maritime cases the same as all other federal cases for the doctrine of forum non conveniens. Moreover, Defendants urge, the United States Supreme Court, in Missouri v. Mayfield, 340 U.S. 1 (1950) (Because Employers' Liability Act allows state courts to entertain suits arising under it, the Missouri State Court may decide under state law if forum non conveniens applies), held that the federal forum non conveniens law does not preempt the state forum non conveniens law. Defendants then cite Alfaro, 786 S.W.2d 674 and the Fourteenth Court of Appeals, Choo, 1991 WL 149274, as clear support for their argument against enjoining the state court action insofar as the Indonesian law claim is concerned.

The problem here is that the Fifth Circuit, in a different case, has ruled contrary to the Texas court in determining that "federal maritime defense of forum non conveniens is constitutionally supreme in a maritime or Jones Act case over state laws that do not recognize this doctrine."[3] Ikospentakis, 915 F.2d at 180, citing and endorsing its earlier holding in Exxon Corp. v. Chick Kam Choo, 817 F.2d 307 (5th Cir. 1987), rev-d on other grounds.

---

[3] The Supreme Court in Choo, 486 U.S. 140, 108 S.Ct. at 1691, expressly did not rule on the preemption issue.

486 U.S. 140 (1988). In Ikospentakis, the Fifth Circuit noted that although courts in Louisiana (like the Fourteenth Court of Appeals in Texas) have refused to recognize the preemptive force of the federal doctrine, "[a]t some point, Louisiana must bend to the federal court's construction of federal law." Id. and n.3. The Circuit found that the defendants would suffer "clear legal prejudice" in being stripped of a forum non conveniens defense, available to them in federal court, in violation of the supremacy clause. Id. at 178-79. Given the appellate court's holding in Quintero, 914 F.2d at 722, that a federal district court's forum non conveniens dismissal may be given preclusive effect by designating it as "with prejudice,"[4] this Court, which is bound to follow the Circuit, must conclude that Plaintiffs' motion for summary judgment and permanent injunction should be granted.

According, the Court ORDERS the following:

(1) Plaintiffs' motion for summary judgment and for permanent injunctive relief is GRANTED;

(2) Defendants Peter Manangkalangi and his attorneys are PERMANENTLY ENJOINED from prosecuting Cause No. 83-75297 in the 164th Judicial District of Harris County, Texas or any claims arising from injuries suffered by Peter Manangkalangi on the offshore oil well workover operations in the Java Sea, Indonesia on June 21, 1977 in any state or federal court in this country; and

---

[4] The federal district court gave Manandkalangi more than a sufficient time to refile his suit in Indonesia before deciding that further delay in issuing an unconditional final judgment, when the plaintiff's conduct to protect his suit wa so dilatory, would be fruitless.

(3) Defendants shall pay costs of Court. Plaintiffs have requested reasonable attorney's fees. The Court further

ORDERS Plaintiffs' counsel to submit by February 7, 1992 an affidavit supporting a request for attorneys' fees that complies with the requirements of Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974). Defendants shall file any objections by February 17, 1992. The Court will then rule on the record and issue a final judgment.

SIGNED this 22nd day of January, 1992, at Houston, Texas.

/s/
James DeAnda
CHIEF JUDGE
UNITED STATES DISTRICT COURT

APPENDIX G

AMENDMENT V - GRAND JURY INDICTMENT FOR CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS OF LAW; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces or in the Militia. when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 14

Section 1. Citizens of the United States.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX H

§ 2283. Stay of State court proceedings

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgment.

APPENDIX I

INJUNCTIONS **RULE 65**

(d) Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Supreme Court, U.S.
FILED
SEP 6 1994
OFFICE OF THE CLERK

(2)

NO. 94-211

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

Benton Musslewhite, the Law Offices of
Benton Musslewhite, and Peter Manangkalangi,
Petitioners,
v.
Reading & Bates Petroleum Company,
Reading & Bates Exploration Company, and
Reading & Bates Drilling Company,
Respondents.

Brief In Opposition To Petition For Writ Of Certiorari To the United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

James Patrick Cooney
Royston, Rayzor,
Vickery & Williams, L.L.P.
2200 Texas Commerce Tower
600 Travis
Houston, Texas 77002
Telephone: (713) 224-8380
Telecopier: (713) 225-9945

Attorney for Respondents

Alpha Law Brief Company • Houston, Texas • (713) 981-9000 • 1-800-981-9001

BEST AVAILABLE COPY

48 pp

Question Presented

Whether the district court abused its discretion by exercising its power to enforce a permanent injunction enjoining the prosecution of a state action asserting a claim which had been dismissed with prejudice in a prior federal action.

Table of Contents

Section	Page
Questions Presented	i
Table of Authorities	iv
Statement of the Case	1
Reasons for Denying the Writ	4
Argument	6
I. The Decision Below neither Departs from the Usual and Accepted Course of Judicial Proceedings nor Involves an Unsettled Question of Federal Law	6
A. The District Court did not Abuse its Discretion	6
B. The District Court's Contempt Order neither Modified nor Expanded the March 5, 1992 Injunction	8
C. The "Vagueness" Issue is not Properly Before this Court	9
D. The First Contempt Order was not Vague in Prohibiting Further Prosecution of State Court Lawsuit	10

II. There is No Conflict of Decision 12

Conclusion 15

Appendix A 1a

Appendix B 6a

Appendix C 13a

Appendix D 15a

Appendix E 17a

Appendix F 23a

Appendix G 26a

Table of Authorities

Cases	Page
American Dredging Co. v. Miller, 114 S. Ct. 981 (1994)	5, 7, 15
Cannon v. Loyola University of Chicago, 687 F. Supp. 424 (N.D. Ill. 1988)	8
Chick Kam Choo v. Exxon, 486 U.S. 140 (1988)	5
FDIC v. Blain, 808 F.2d 395 (5th Cir. 1987)	8
In re Cobb, 88 B.R. 119 (Bankr. W.D. Tex. 1988)	11
Int'l Longshoremen's Ass'n v. Phila. Marine Trade Ass'n, 389 U.S. 75 (1967)	13
International Ass'n of Machinists v. Eastern Airlines, Inc., *849 F.2d 1481, 1486 (D.C. Cir. 1988)*	9
Milkwagon Drivers Union of Chicago v. Meadowmoor Dairies, Inc., 312 U.S. 287, 298 (1941)	13, 14
NBA Properties, Inc. v. Gold, 895 F.2d 30 (1st Cir. 1990)	13

U.S. v. United Mine Workers,
330 U.S. 258 (1946) 10, 14

Statutes **Page**

11 U.S.C. § 362 11

11 U.S.C. § 362(c)(2) 11

28 U.S.C. § 2283 . . . . . .4, 12

Fed. R. Civ. P. 60(b) 14

Tex. R. Civ. P. 7 11

Tex. R. Civ. P. 12 11

Other Authority **Page**

Webster's New Collegiate Dictionary
(G & C Merriam Co., 1961) 10

NO. 94-211

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

BENTON MUSSLEWHITE, the LAW OFFICES OF BENTON MUSSLEWHITE, and PETER MANANGKALANGI,

Petitioners,

v.

READING & BATES PETROLEUM COMPANY, READING & BATES EXPLORATION COMPANY, and READING & BATES DRILLING COMPANY,

Respondents.

Brief In Opposition To Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents, Reading & Bates Petroleum Company, Reading & Bates Exploration Company, and Reading & Bates Drilling Company, file this Brief in Opposition to Petitioner's Petition for Writ of Certiorari.

Statement of the Case

This case involves the power of a federal district court to enforce its own final judgment dismissing a claim with prejudice. Petitioner Benton Musslewhite filed an action on behalf of Peter Manangkalangi in the United States District

Court for the Southern District of Texas on June 19, 1979, seeking to recover damages for personal injuries allegedly sustained by Petitioner Peter Manangkalangi on June 21, 1977, while Manangkalangi was employed aboard a vessel engaged in an oil well workover operation in the Java Sea off Indonesia (the "federal action").[1/] On December 28, 1983, Musslewhite filed an action asserting the same claim on behalf of Manangkalangi in the 164th District Court of Harris County, Texas (the "state action").[2/] On April 5, 1984, a Memorandum and Order was entered by the federal court granting Respondents' Motion for Entry of Final Judgment. The Memorandum and Order specifically provided:

> . . . the claims set forth in Plaintiff's complaint and first amended complaint are DISMISSED with prejudice.
>
> * * *
>
> This is a FINAL JUDGMENT.[3/]

There was no appeal from this Final Judgment. However, the state action remained pending, but inactive.

1/ Civil Action No. H-79-1253; in the United States District Court for the Southern District of Texas, Houston Division. A copy of the Original Complaint in the federal action is set forth in Appendix A at page 1a.

2/ Cause No. 83-75297 in the 164th Judicial District Court of Harris County, Texas. A copy of the Petition filed in the state action is set forth in Appendix B at page 6a.

3/ A copy of the Memorandum and Order of April 5, 1984 is set forth in Appendix C at page 13a.

On June 10, 1986, Reading & Bates filed an action (the "injunction action") in the United States District Court for the Southern District of Texas seeking to permanently enjoin the further prosecution of the state action on the basis of the federal Final Judgment entered on April 5, 1984. A Final Judgment was entered in the injunction action on March 3, 1992, permanently enjoining Manangkalangi and his attorney Musslewhite from prosecuting the state action or any claims arising from the injuries allegedly sustained in June of 1977.[4/] There was no appeal from this Final Judgment.

Contrary to Petitioner's assertions, the 1992 Injunction was based not on *forum non conveniens*, but on the *res judicata* effect of the Final Judgment in the original federal action. The Final Judgment in the injunction action provides:

> Defendants [Peter Manangkalangi, Benton Musslewhite, and the Law Offices of Benton Musslewhite, individually and as attorneys for Peter Manangkalangi] are PERMANENTLY ENJOINED from prosecuting Cause No. 83-75297 in the 164th Judicial District Court of Harris County, Texas or any claims arising from injuries suffered by Peter Manangkalangi on the offshore oil well workover operations in the Java Sea on June 21, 1977 in any state or federal court in this country.

On July 15, 1993, the 164th District Court of Harris County dismissed the state action for want of prosecution. On August 16, 1993, Musslewhite filed a Motion for New Trial, Rehearing, to Reconsider Dismissal and to Reinstate

---

[4/] A copy of the Injunction is set forth in Appendix D at page 15a.

the Case in the state action.[5/] In response to this Motion the state court vacated its dismissal order and reinstated the state action. Reading & Bates, in order to protect its rights under the 1984 Final Judgment and the 1992 Permanent Injunction, filed a motion in federal court requesting that Musslewhite and Manangkalangi be held in contempt of court for violating the injunction by filing the Motion for New Trial in the state action.

On December 10, 1993, following an evidentiary hearing, the federal court found that the filing of the Motion for New Trial in state court violated the federal injunction and held Musslewhite and his client in civil contempt of court. The contempt order of December 10, 1993, *inter alia,* directed the Petitioner to inform the state court of the injunction and the contempt order; to withdraw the motion to reinstate the state district court and to take actions necessary to have the state court dismiss the state action. Musslewhite was to report back to the federal court on December 17, 1993 and advise as to the actions he had taken to comply with the contempt order. Musslewhite did not take any action to dismiss the state action. After a second evidentiary hearing, the federal court entered the second contempt order, remanding Musslewhite to the custody of the United States Marshall during week days until he purged himself of contempt.

Reasons for Denying the Writ

This case concerns the power of a federal court to protect or effectuate its judgments by enjoining proceedings in a state court. Such power is expressly granted to the federal courts by Section 2283 of Title 28, United States Code, which provides:

5/ A copy of this Motion is set forth in Appendix E at page 17a.

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

The issue in this case is simply whether the district court abused its discretion in finding Mr. Musslewhite in contempt of court for seeking to prosecute a state action identical to a federal action which had been finally concluded by the entry of a final judgment dismissing the claim with prejudice, and ordering Musslewhite to purge himself of that contempt by undoing the effects of his efforts to reinstate the state court action by causing it to be dismissed. The district court's orders are not in conflict with any federal precedent. The district court did not depart from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. Finally, the case does not involve such an important question of federal law which has not been, but should be settled by this Court. No amount of strained semantics can convert this case into one warranting review by this Court on certiorari.

The Petitioner incorrectly characterizes this case as one involving a question of federal preemption. ***See Chick Kam Choo v. Exxon***, 486 U.S. 140 (1988). Relying on the Court's recent decision in ***American Dredging v . Miller***, 114 S. Ct. 981 (1994), the Petitioner attempts to reopen the 1984 final judgment because the basis of that dismissal was the *forum non conveniens* doctrine. While it is true that the original federal action was dismissed on the basis of *forum non conveniens,* the district court went on to direct the Petitioner to institute proceedings in Indonesia within a set period of time. Upon his failure to do so, a final judgment was entered dismissing the claim with prejudice. No appeal was taken from this judgment; and it is now ten years too

late to argue that this final judgment does not preclude the assertion of the same claim in state court.

The filing of the motion to reinstate the state court action after it had been dismissed constituted a violation of the 1992 federal injunction prohibiting the prosecution of the state action. Therefore, the district court acted properly in finding Musslewhite in contempt and ordering him to purge himself of that contempt. The district court's order of December 13, 1993, finding Benton Musslewhite in civil contempt neither expanded nor modified the March 5, 1992 injunction. The issue of the "vagueness" of the injunction is not reviewable in this contempt proceeding. Moreover, the injunction of March 5, 1992, and the contempt order of December 13, 1993, were not vague in their use of the term "prosecution." The term clearly encompasses the actions taken by the Petitioner in state court.

I.

The Decision Below Neither Departs from the Usual and Accepted Course of Judicial Proceedings nor Involves an Unsettled Question of Federal Law.

A. The District Court did not Abuse its Discretion.

The district court did not abuse its discretion in finding Mr. Musslewhite in contempt of court, and ordering him to purge himself of contempt by undoing the effects of his efforts to reinstate the state court action. Indeed, this action was the only proper response to the Petitioner's violation of the injunction. The injunction herein, based on the *res judicata* force of the prior unappealed federal Final Judgment dismissing a claim with prejudice, cannot be construed, as the Petitioner contends, to allow for the continued maintenance of the enjoined action to exist on the state court

docket in perpetuity. Such an injunction is intended to dispose of the enjoined action. The affirmative action of the Petitioner to reinstate the state action frustrated the intent of the federal injunction, which was to enforce the *res judicata* effect of the prior final judgment entered by the district court, and clearly constituted "prosecution" of the state court action.

Petitioner's justification for this disobedience of the clear language of the injunction is his contention that ***American Dredging Co. v. Miller***, 114 S. Ct. 981 (1994) somehow relieves him from the effects of the 1992 Injunction and the 1984 Final Judgment dismissing Manangkalangi's claim with prejudice. Petitioner refuses to recognize that the injunction rendered against him on March 19, 1992 had nothing to do with the current state of federal *forum non conveniens* law. It enforced the *res judicata* effect of an unappealed federal final judgment entered against the Petitioner's client in March of 1984, which dismissed his personal injury claim with prejudice. The cases which Petitioner cites have nothing to with *res judicata*. They do not affect the present suit in any way, nor could they possibly justify or excuse the Petitioner's conduct.

The Petitioner's actions in state court, as well as his refusal to comply with the district court's contempt order, demonstrate his repeated and flagrant disregard for the orders of the district court. Far from being an abuse of discretion, the district court's action in enforcing its injunction and ordering the Petitioner to purge his contempt was the only proper response to the Petitioner's conduct.

B. The District Court's Contempt Order Neither Modified nor Expanded the March 5, 1992 Injunction.

The contempt order did not modify or expand the injunction; it simply ordered Musslewhite to purge himself of contempt and return the state action to the status in which it was in immediately prior to his act of contempt. It is axiomatic that a court may, subsequent to a finding of contempt, order the violator to take affirmative action to purge himself of contempt. ***FDIC v. Blain***, 808 F.2d 395 (5th Cir. 1987). This is true even when, as in the present case, the injunction violated was proscriptive. ***Blain*** concerned a trustee who was enjoined from depleting a particular trust account. Finding that the trustee had spent over $1,000,000.00 of trust funds in violation of this injunction, the court found the trustee in contempt and ordered the trustee to take whatever affirmative steps were necessary, including borrowing funds if necessary, to return the money to the account.

It is unquestioned that a United States District Court has the power to order a person who violates an injunction to take affirmative steps to undo the effects of the violation. *See, e.g.* ***Cannon v. Loyola University of Chicago***, 687 F. Supp. 424 (N.D. Ill. 1988), *also* 676 F. Supp. 823 (N.D. Ill. 1987).[6/] The Petitioner asserts, without authority, a rule that would make it impossible for a federal court to enforce

---

[6/] *Cannon* concerned a woman perennially rejected in her application to various medical schools, and her husband, who perennially filed groundless lawsuits against the offending medical schools on her behalf. The United States District Court for the Northern District of Illinois entered an injunction which specifically forbade the husband from reinstating one such action. The husband moved to reinstate the action, thus violating the injunction, and was found in contempt. The court ordered him to dismiss the case, and fined him $100.00 per day until he had purged herself of contempt. *Id.* at 425.

its own injunctive orders. In the ***Blain*** situation, the court would be empowered to enjoin the trustee from improperly spending the trust money, but powerless to order its return if the trustee spent money in violation of the injunction. Such a position cannot be sustained.

There is no question that a court may not simultaneously hold a party in contempt of an earlier injunction and enter a new or modified injunction without weighing relevant criteria and making factual findings necessary to support the new injunction. ***International Ass'n of Machinists v. Eastern Airlines, Inc.***, 849 F.2d 1481, 1486 (D.C. Cir. 1988).[7/] The present case is quite different from the factual situation in ***Eastern Airlines***. The contempt order rendered by the Southern District of Texas did not enjoin action of the Petitioner different from the previously enjoined activities, it merely ordered the Petitioner to undo what had been done in violation of the injunction.

C. The Issue of "Vagueness" is not Properly Before this Court

What was being sought on appeal below and is being sought here is an opportunity to collaterally attack the *1992 Injunction*, principally on the basis of vagueness. Apparently realizing that the substance of an injunction cannot be

---

[7/] In *Eastern Airlines*, the carrier was enjoined from spinning off its fleet service employees into a wholly owned subsidiary. The airline announced that it would sell its entire East Coast shuttle operations to a subsidiary of Eastern's corporate parent. The district court found the airline in contempt of the injunction, and enjoined the announced sale. On appeal, the D.C. Circuit found that the announced action was not violative of the first injunction, and that the contempt order forbidding the sale constituted a new injunction, unsupported by the weighing of relevant criteria and factual findings necessary to support a new injunction.

collaterally attacked in contempt proceedings, ***U.S. v. United Mine Workers***, 330 U.S. 258 (1946), Petitioner avers that the *contempt order* is vague in prohibiting prosecution of the case. The contempt order does not, of course, prohibit prosecution of the case. It simply instructs Petitioner on how to purge himself of contempt, and orders him to do so. This is an impermissible attempt to collaterally attack the substance of an unappealed final judgment and injunction through contempt proceedings.

D. The First Contempt Order was not Vague in Prohibiting Prosecution of the State Court Lawsuit.

Even if the "vagueness" of the injunction were properly at issue, Musslewhite's argument would lack merit. While this argument is at best misplaced, it is also best responded to by allowing the document to speak for itself. The injunction is clear and unambiguous. It is difficult to mistake the meaning of the statement "Defendants are PERMANENTLY ENJOINED from prosecuting Cause No. 83-75297 in the 164th Judicial District Court of Harris County, Texas." Musslewhite contends that by simply seeking to have the case reinstated, that he did not actually "prosecute" the action. The filing of a post-dismissal motion to reinstate would clearly be described as "prosecution" of an action in all but the most twisted interpretation of the word.[8/] The meaning of prosecution remains the same under the Texas Rules of Civil Procedure, and includes the institution and carrying on of that suit.[9/] The motion to

---

[8/] Webster's New Collegiate Dictionary (G. & C. Merriam Co., 1961) defines "prosecution" as "The institution and carrying on of a suit or proceedings in a court of law or equity, specif. of a criminal suit."

[9/] The Texas Rules of Civil Procedure consistently use the term "prosecution" to refer to the entirety of the representation of a

(continued...)

reinstate could have only one purpose: the continued prosecution of the suit to a conclusion, which was the very thing enjoined.[10/]

[9/](...continued)

plaintiff's case: "Any party to a suit may appear and *prosecute* or defend his rights therein, either in person or by an attorney of the court." Tx. R. Civ. P. 7. "Any party in a suit or proceeding pending in this state may, by sworn written motion stating that he believes the suit or proceeding is being *prosecuted* or defended without authority, cause the attorney to be cited to appear before the court and show his authority to act." Tx. R. Civ. P. 12. If Petitioner had filed his state court motion without authority, Rule 12 would have required him to show authority for his prosecution of Mr. Manangkalangi's case. Indeed, to pursue a claim in the courts of the State of Texas is by definition to "prosecute" that claim. Petitioner's action in seeking reinstatement of the state action was by statutory definition "prosecution" of that action. His argument to the contrary is frivolous.

[10/] The Bankruptcy cases Petitioner cites for the proposition that his motion to reinstate does not constitute prosecution are inapposite. It must first be noted that In Re Cobb, 88 B.R. 119 (Bankr. W.D. Tex. 1988), involved the automatic stay contained in Bankruptcy Code § 362, 11 U.S.C. § 362, and did not involve a permanent injunction prohibiting the further assertion of a claim. The case does not in any way assist in defining the word "prosecution" as used in the injunction. Second, the rationale behind an automatic stay in bankruptcy is entirely different from that underlying a permanent injunction. The automatic stay enjoyed by a debtor during bankruptcy proceedings is designed to force a standstill in proceedings outside of the bankruptcy court until the bankruptcy court can determine which court should deal with a controversy. It is by definition temporary. All parties to the bankruptcy action contemplate that the stay is for a finite duration, and will be lifted. Section 362(c)(2) states that the automatic stay will be automatically discontinued when the bankruptcy case is closed or dismissed, or a

(continued...)

The 1992 Injunction was within the grant of power given to the federal courts under Section 2283 of Title 28, United States Code, to protect or effectuate their judgments. The Petitioner's efforts to have the state action reinstated after its dismissal for want of prosecution, which was already barred by the prior federal judgment, was a violation of the injunction, justifying the district court to find the Petitioner in contempt and impose appropriate sanctions if the Petitioner refused to purge himself of contempt. The district court did not depart from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. Furthermore, the case does not involve any unsettled questions of federal law which should be settled by this Court.

II.

There is No Conflict of Decision

Petitioner asserts that the district court's orders are contrary to decisions of this Court and Circuit Courts of Appeal in several respects. In doing so the Petitioner attempts to create conflict where none exists.

[10/](...continued)

discharge is granted or denied. The automatic stay is not a permanent injunction. It not only makes perfect sense, but is in fact necessary, for a proceeding subject to an automatic bankruptcy stay to be allowed to remain alive during the pendency of the automatic stay.

This reasoning does not apply to a permanent injunction, such as that entered March 5, 1992. The permanent enjoining of the prosecution of an action is tantamount to ordering its dismissal. Moreover, when the assertion of an action whose prosecution is enjoined is barred on the basis of *res judicata*, the clear purpose of the injunction is to bring the claim to a final, complete, and permanent conclusion.

Petitioner contends that the contempt orders below conflict with numerous decisions which require that an injunction specify precisely what acts are forbidden. ***E.g. Int'l Longshoremen's Ass'n v. Phila. Marine Trade Ass'n***, 389 U.S. 75 (1967). Petitioner also argues, without authority, that the enforcement of such an "ambiguous" order would somehow violate due process. First, as noted above, this issue of the "vagueness" of the injunction is not at issue in this contempt proceeding. Second, even if the vagueness of the injunction were before this Court, Petitioner's argument would lack merit as the injunction was clear and unambiguous. There is no conflict on this point.

Petitioner also argues that the district court's orders conflict with decisions holding that a federal court cannot modify an injunction in the context of a contempt hearing. ***E.g. NBA Properties, Inc. v. Gold***, 895 F.2d 30 (1st Cir. 1990). As noted above, there was no such modification. The district court simply ordered Musslewhite to purge himself of contempt and return the state action to the status in which it was in immediately prior to his act of contempt. It is undisputed that a court may, subsequent to a finding of contempt, order the violator to take affirmative action to purge himself of contempt. As the district court did not modify the injunction, there is no conflict on this point.

Finally, Petitioner avers that the district court's orders conflict with this Court's holding in ***Milkwagon Drivers Union of Chicago v. Meadowmoor Dairies, Inc.***, 312 U.S. 287, 298 (1941) that an injunction should be dissolved or modified when there has been a change in the law. This contention clearly demonstrates the inconsistency of the Petitioner's arguments. After first contending that the Court impermissibly modified the injunction in its contempt order; Petitioner now declares that the district court *should* have modified its 1992 Injunction in light of alleged changes in

the law.[11/] Suffice to say, as detailed above, there has been no change in the law concerning the *res judicata* effect of a prior with prejudice federal final judgment. No modification of the injunction is necessary. A Final, With Prejudice, Judgment of a United States District Court entered ten years before ***Miller***, is just as valid and binding on Petitioner after ***Miller***. The district court's orders did not conflict with ***Milkwagon Drivers***, or any other precedent.

[11/] The proper procedure to seek a modification of an injunction or any other final judgment is provided for under Rule 60(b) of the Federal Rules of Civil Procedure. Petitioner in fact filed such a motion, which was denied by the district court on December 4, 1993. A copy of this motion is set forth in Appendix F at page 23a. A copy of the Order denying the motion is set forth in Appendix G at page 25a. No appeal was taken from this order. The question of whether the injunction should be modified was not before the district court in the contempt proceedings, and is not now before this Court. ***United Mine Workers, supra***.

Conclusion

Respondents Reading & Bates Petroleum Company, Reading & Bates Exploration Company, and Reading & Bates Drilling Company respectfully submit that for the foregoing reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

ROYSTON, RAYZOR, VICKERY & WILLIAMS, L.L.P.

James Patrick Cooney
Counsel for Respondents,
Reading & Bates Petroleum Company,
Reading & Bates Exploration Company and
Reading & Bates Drilling Company

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PETER MANANGKALANGI	§	
	§	C. A. NO.
V.	§	H-79-1253
	§	
READING & BATES	§	

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, PETER MANANGKALANGI, hereinafter referred to as "Plaintiff", complaining of READING & BATES, hereinafter referred to as "Defendant", and for cause of action would respectfully show unto this Honorable Court and Jury the following, to-wit:

I.

Plaintiff is a resident citizen of Jakarta, Indonesia.

Defendant is a corporation authorized to do business in the State of Texas and may be served with process by and through the Secretary of State, by serving its registered agent, C.T. Corporation Systems, Republic National Bank Building, Dallas Ii. Texas, 75201.

This is an action within the admiralty and maritime jurisdiction of this Court. It is brought pursuant to 46

USCA, Section 688, commonly called the Jones Act, and all amendments thereto. Your Plaintiff would show that he is a seaman and as such is entitled to benefits under the general maritime law.

III.

At all times material hereto, your Plaintiff would show that he was employed by the Defendant, Reading & Bates, as a "roughneck" aboard the drilling barge, Giant Mariner, which it is Plaintiff's information and belief is owned and/or operated by said Defendant. On or about the 20th day of June, 1977, while Plaintiff was employed aboard the drilling barge Giant Mariner, which was located in the Java Sea, he was ordered by his immediate supervisor, Defendant's servant, agent and employee to open a back pressure valve in a highdrill system. Said valve was under pressure and when Plaintiff complied with his supervisor's instructions, the top of the valve blew off and struck Plaintiff in the testicles, causing him serious, disabling and permanent injuries and damages, all as hereinafter alleged.

IV.

Your Plaintiff would show that the Defendant, its agents, servants and employees were negligent and the aforementioned drilling barge was unseaworthy in the following respects, to-wit:

(a) Failure to supply Plaintiff with a safe place in which to work;

(b) Failure to supply Plaintiff with a sufficient number of competent co-employees and property trained personnel;

(c) Failure to properly instruct Plaintiff in the course of his duties;

(d) Failure to properly superintend and supervise the work in which Plaintiff was involved at the time of his injury;

(e) Failure to promulgate and enforce proper and safe rules for the safe conduct of the work in which Plaintiff was involved and to warn Plaintiff of the impending dangers inherent in his work;

(f) Failure to properly comply with existing safety regulations and rules as required by governmental authorities, previously promulgated industry guidelines and/or safety regulations of the Defendant;

(g) Failure to provide Plaintiff with adequate tools and other equipment with which to perform the duties assigned him at the time and on the occasion in question;

h) Failure to supply the Plaintiff with proper safety devices, said safety devices being widely used within the industry and readily available to the Defendant;

(i) Failure to maintain the exact location in which the injury to Plaintiff occurred in safe working condition;

(j) Failure to properly outfit the vessel upon which Plaintiff was serving with the necessary equipment, personnel and devices with which

to properly perform the duties to which Plaintiff was assigned;

(k) The actions of the Plaintiff's supervisors were negligent in that they failed to use ordinary and prudent care in ordering the Plaintiff to perform the duties which resulted in the injuries complained of herein;

(l) Plaintiff would further show that there were substantial other acts of negligence and/or conditions of unseaworthiness which were either permitted to exist at the time of the injury to your Plaintiff or where in existence at such time.

V.

Plaintiff would show that by reason of the injuries sustained as a result of the accident of June 20, 1977, he has been rendered totally and permanently sterile and impotent. Plaintiff would show that he has been caused to suffer and sustain great physical pain and mental anguish in the past and, in all reasonable medical probability, will continue to suffer and sustain great physical pain and mental anguish in the indefinite future, if not for the rest of his life. Plaintiff has been caused to incur reasonable and necessary medical expenses in the past and, in all reasonable medical probability, will be caused to incur reasonable and necessary medical expenses in the indefinite future. Plaintiff has been caused to suffer and sustain the loss of earnings in the past and his earning capacity in the future had been diminished. Plaintiff would show that he was 23 years of age at the time of the accident in question with a work-life expectancy of 42 years and a life expectancy of 47 years.

VI.

By reason of the above and foregoing, Plaintiff has been damaged in the sum of at least FIVE HUNDRED THOUSAND AND NO/100 ($500,000.00) DOLLARS, for which he comes now and sues.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer herein; that upon final trial hereof, Plaintiff have judgment against the Defendant for the sum heretofore pled, with interest thereon from the date of trial, all costs of Court, medical expenses, attorney's fees, lost wages, and for such other and further relief, both general and special, to which Plaintiff may show himself justly entitled to receive.

Respectfully submitted,

LAW OFFICES OF BENTON MUSSLEWHITE, INC.

/s/

Benton MUsslewhite
Attorney for Plaintiff
609 Fannin, Suite 1901
Houston, Texas 77002
(713) ~~224 0413~~
520 0621

APPENDIX B

NO. 83-75297

PETER MANANGKALANGI	§	IN THE DISTRICT
	§	COURT OF
VS.	§	
	§	HARRIS COUNTY,
READING & BATES	§	TEXAS
COMPANY; READING &	§	
BATES EXPLORATION	§	
COMPANY; READING &	§	164TH JUDICIAL
BATES DRILLING COMPANY;	§	DISTRICT
IIAPCO DIVISION OF	§	
NATOMAS INTERNATIONAL	§	
CORPORATION and JARDINE	§	
FEARNLEY OFFSHORE	§	
OPERATIONS	§	

PLAINTIFF'S ORIGINAL PETITION
(Jury Trial Requested)

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW PETER MANANGKALANGI, hereinafter referred to as Plaintiff, complaining of READING & BATES COMPANY; READING & BATES EXPLORATION COMPANY; READING & BATES DRILLING COMPANY; IIAPCO DIVISION OF NATOMAS INTERNATIONAL CORPORATION and JARDINE FEARNLEY OFFSHORE OPERATIONS, hereinafter referred to as Defendants and for cause of action would respectfully show the Court as follows, to-wit:

I.

Plaintiff is a citizen of Indonesia.

The Defendant, READING & BATES COMPANY, is a Delaware corporation authorized to do business in the State of Texas with an agent for service in the State of Texas, and service of process can be had upon said agent for service, C.T. Corporation Systems, Republic National Bank Building, Dallas, Texas.

The Defendant, READING & BATES EXPLORATION COMPANY, is a Oklahoma corporation authorized to do business in the State of Texas with an agent for service in the State of Texas, and service process can be had upon said agent for service, C.T. Corporation Systems, Republic National Bank Building, Dallas, Texas.

The Defendant, READING & BATES DRILLING COMPANY, is a Oklahoma corporation authorized to do business in the State of Texas with an agent for service in the State of Texas, and service of process can be had upon said agent for service, C.T. Corporation Systems, Republic National Bank Building, Dallas, Texas.

The Defendant, IIAPCO DIVISION OF NATOMAS INTERNATIONAL CORPORATION, is a foreign corporation which is doing business in the State of Texas within the meaning of Article 2031(b), Texas Revised Civil Statutes (Vernon's). However, IIAPCO DIVISION OF NATOMAS INTERNATIONAL CORPORATION, maintains no registered agent for service of process within the State of Texas, and maintains no regular place of business in Texas. Summons may be served upon this Defendant by serving the Secretary of State of Texas, who shall forward the Petition

to the Defendant's agent for service, Five Pillars Office Park, Box 2759, Los Angeles, California 90017.

The Defendant, JARDINE FEARNLEY OFFSHORE OPERATIONS, is a foreign corporation which is doing business in Texas within the meaning of Article 2031(b), Texas Revised Civil Statutes (Vernon's). However, JARDINE FEARNLEY OFFSHORE OPERATIONS, maintains no registered agent for service of process within the State of Texas, and maintains no regular place of business in Texas. Summons may be served upon this Defendant by serving the Secretary of State of Texas who shall forward the Petition to the Defendant's agent for service, 15th Floor, Malayan Credit House, 96 Somerset Road. Singapore 9, Singapore.

II.

This suit is being brought under Article 4678, Revised Civil Statutes of Texas, which provides as follows:

> "Whenever the death or personal injury of a citizen of this State or of the United States or of any foreign country having equal treaty rights with the United States on behalf of its citizens, has been or may be caused by the wrongful act, neglect or default of another in any foreign State or Country for which a right to maintain an action and recover damages thereof is given by the statute or law of such foreign State or Country or of this State, such right of action may be enforced on the courts of this State within the time prescribed for the commencement of such actions by the statutes of this State. All matters pertaining to procedure in the prosecution or maintenance of such actions by the statutes of this States. All matters pertaining to such action in the

courts of this State shall be governed by the law of this State, and the court shall apply such rules of substantive law as are appropriate under the facts of the case."

III.

In connection with the foregoing, your Plaintiff would show that the nation of which the Plaintiff is a citizen has "equal treaty rights" with the United States. In connection with the foregoing statute, your Plaintiff would show that the Court should apply American (either maritime and/or Texas common law) to this case. Plaintiff would show that there are substantial and/or significant contacts, within the meaning of the Texas conflict of law rules, between the Defendants and the transaction in question and the United States and Texas. Therefore, the application of American and Texas law is mandated.

IV.

In the alternative, and only in the alternative, Plaintiff requests the Court to apply the substantive law of Indonesia which the Plaintiff would show is similar to the law of Texas with respect to liability and damages in this case. Notice is hereby given that the law of Indonesia may be relied upon as a means of recovery herein.

V.

In addition of all the foregoing remedies, your Plaintiff sues under the Jones Act, 46 U.S.C. §688. These claims are brought under the provisions of the Jones Act which allows the Plaintiff to sue in State Court and also under the Pendant Jurisdiction of this Court.

Moreover, this suit is brought under the general maritime law of the United States.

VII.

In addition, Plaintiff hereby expressly pleads all treaties between the United States and the nation of which the Plaintiff is a citizen. Under the terms of those treaties, the Plaintiff is guaranteed the same access to the Courts of the United States that American citizens have. It would be a violation of those treaties for this Court to dismiss this case on any grounds or to deny the access to our Courts by these citizens pursuant to the terms and provisions of such treaties. In particular, the Plaintiff now pleads the multilateral treaty entitled "Shipowners Liability (Sick and Injured Seamen) Convention of 1936, 54 Stat. 1963. In particular, your Plaintiff pleads Article 11 thereof which provides as follows:

> "This convention in national laws are regulations relating to benefits under this convention shall be so interpreted and enforced as to insure a quality of treatment to all seamen irrespective of nationality, domicile or race."

VIII.

In connection with these claims, Plaintiff would show that on or about the 21st day of June, 1977, the Plaintiff, PETER MANANGKALANGI, was the seaman employee of Defendants and a member of the crew of the vessel "GIANT MARINER", owned and operated by the Defendants, when, by reason of the negligence of the Defendants, jointly and severally, and/or the unseaworthiness of the vessel and its appurtenances, he suffered and sustained serious injuries, all of which caused the damages hereinafter alleged. Plaintiff would show that the negligence of the Defendants was a

proximate cause and/or was a cause, in whole or in part, at least to the slightest extent, of the serious injuries and the ensuing damages of the Plaintiff. Moreover, your Plaintiff would show that the unseaworthiness of the vessel and its appurtenances was a proximate cause and/or a cause, in whole or in part, at least to the slightest extent, of the serious injuries and the ensuing damages. Moreover, the Defendants are guilty of liability and causation under the law of Texas and/or the Jones Act and/or the general maritime law and/or the law of Indonesia, and thus responsible for Plaintiff's damages under such laws.

IX.

By reason of all the foregoing your Plaintiff would show that he has been caused to suffer and sustain permanent and grievous injuries to his testicles and body generally and thus has suffered a loss of earnings in the past and future; physical pain and mental anguish in the past and future; medical expenses in the past and future; loss of maintenance and cure and unearned wages in the past and future; and has generally been damaged in the sum and amount of ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 ($1,500,000.00) DOLLARS, for which amount he comes now and sues. Plaintiff would show that the foregoing is merely an estimate of damages and would show the Court that the damages far exceed the minimum jurisdictional requirements of the Court and Plaintiff actually sues for whatever damages the Court and/or Jury might award him, but in no event less than the amount hereinabove alleged.

X.

Plaintiff would show that the conduct of the Defendants in this case was tantamount to a conscious and willful disregard for the rights of the Plaintiff and others

similarly situated and therefore Plaintiff is entitled to punitive damages in the amount that should be assessed by the jury, as punishment to these Defendants, and as an example to others who might be tempted to engage in the same kind of conscious and willful misconduct, of no less than two times the actual damages awarded.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Defendants be cited to appear and answer herein, and upon trial hereof that Plaintiff have his actual damages in the sum and amount of ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 ($1,500,000.00) DOLLARS, and punitive damages in an amount of no less than two times actual damages, and such other and further relief to which he may show himself justly entitled.

Respectfully submitted,

LAW OFFICES OF BENTON MUSSLEWHITE, INC.

By: /s/ Benton Musslewhite

Benton Musslewhite
609 Fannin, Suite 517
Houston, Texas 77002
(713) 222-2288
TBA No. 14752000

OF COUNSEL:
FRED H. BENNERS
Attorney at Law
3104 Fairmont
Dallas, Texas 75201

APPENDIX C

CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
F I L E D
APR 5 1984
JESSE E. CLARK, CLERK
BY DEPUTY: A. Allen

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PETER MANANGKALANGI,	§	
Plaintiff,	§	
vs.	§	C. A.
	§	H-79-1253
READING & BATES , ET AL.,	§	
Defendants.	§	

MEMORANDUM AND ORDER

On October 13, 1983, this Court conditionally granted Defendants' Motion to Dismiss on the basis of forum non conveniens. In the Amended Memorandum and Order signed and entered on that date, the Court provided that the judgment could become final if Plaintiff failed to file this action in Indonesia within ninety days of the date of entry. On March 1, 1984, Defendants' filed their Motion for Entry of Final Judgment, alleging that the ninety day grace period had expired and that Plaintiff had failed to initiate this action in Indonesia.

On March 13, 1984, the Court entered an order directing Plaintiff to respond to Defendants' motion within 15 days. The Order further provided that "[s]hould Plaintiff fail to respond within the time alloted, or provide proof of filing in Indonesia, or show good cause excusing such failure to file . . ." the Court would enter a final judgment without further hearing. It now appearing that Plaintiff has failed to respond and that no just cause exists for further delay in this protracted litigation, the Court hereby ORDERS:

Defendants' Motion for Entry of Final Judgment is GRANTED. Accordingly, the claims set forth in Plaintiff's complaint and first amended complaint are DISMISSED with prejudice.

Costs in this action are to be taxed against Plaintiff.

This is a FINAL JUDGMENT.

The Clerk shall file this Memorandum and Order and provide all parties with a true copy.

DONE at Houston, Texas, this 5 day of April 1984.

/s/
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED
MAR 05 1992
Jesse E. Clark, Clerk
By Deputy: /s/ illegible

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

READING & BATES	§	
PETROLEUM CO.; ET AL.,	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION
	§	NO. H-86-2671
PETER MANANGKALNGI;	§	
ET AL.,	§	
Defendants.	§	

FINAL JUDGMENT

Pursuant to the Court's orders of January 22, 1992 and of this date, the Court

ORDERS that final summary judgment is GRANTED in favor of Plaintiffs Reading & Bates Petroleum Company, Reading & Bates Exploration Company and Reading & Bates Drilling Company against Defendant Peter Manangkalngi, Benton Musslewhite, and the Law Offices of Benton Musslewhite, individually and as attorneys for Peter Manangkalngi. The Court

ORDERS that Defendants are PERMANENTLY ENJOINED from prosecuting Cause No. 83-75297 in the 164th Judicial District Court of Harris County, Texas or any claims arising from injuries suffered by Peter Manangkalngi on the offshore oil well workover operations in the Java Sea, Indonesia on June 21, 1977 in any state or federal court in this country. Furthermore, Defendants shall pay costs of court, as well as Plaintiffs' attorney's fees in the amount of $4,564.50, with post judgment interest in the amount of 4.21% per annum.

SIGNED this 3rd day of March, 1992, at Houston, Texas.

/s/ James DeAnda
JAMES DeANDA, CHIEF JUDGE
UNITED STATES DISTRICT COURT

APPENDIX E

NO. 83-75297

PETER MANANGKALANGI	§	
	§	IN THE DISTRICT
VS.	§	COURT OF HARRIS
	§	COUNTY, TEXAS
READING & BATES COMPANY	§	164TH JUDICIAL
	§	DISTRICT

MOTION FOR NEW TRIAL, REHEARING, TO RECONSIDER DISMISSAL, ORDER AND TO REINSTATE THIS CASE

COMES NOW, Plaintiff, and moves the Court for a new trial, rehearing to reconsider dismissal order and to reinstate this case, and for such motion would respectfully show the Court as follows:

I.
Procedural Facts

On June 28, 1993, the Court notified the parties that this case would be dismissed for want of prosecution unless notice was received by the Court, presenting good cause to the Court as to why this course should be retained upon the docket, by August 18, 1993. On July 2, 1993, the Defendants filed a Motion to Dismiss, seeking dismissal on the basis of a permanent injunction entered by the Federal District Court on March 3, 1992. However, the Defendants did not have that Motion set for submission. Therefore, as provided by Local Rule 3.3.3, no response was due until the Defendants set a submission date, and then the Plaintiff would have until "two working days before the date of submission: in which to file a response. Thereafter, before

the time for responding to the notice of intent to dismiss for failure to prosecute (response date not until August 18, 1993) and before any time for responding to the Motion to Dismiss had become fixed (because Defendant never requested a submission date), this Court, without a hearing, without notice to Plaintiff, and without due process to the Plaintiff, dismissed this case. Such dismissal took place on July 15, 1993.

II.

Response to the Notice of Intent to Dismiss
for Want of Prosecution in Absence of Good Cause

Good cause exists for not dismissing this case because of the injunctions which have been imposed by the federal court against the prosecution in the case. The sequence of events concerning the injunction are as follows: a) prior to October 13, 1983, Plaintiff filed suit in Houston Federal Court; b) the Court dismissed the case on the ground of forum non conveniens on October 13, 1983; c) this suit was filed in the State Court on December 28, 1983; d) thereafter, the Defendants filed an injunction action in the Federal Court; e) on November 26, 1986, the Federal Court entered an agreed stay order which had the effect of staying the proceedings in this Court pending the determination by the Supreme Court of the United States of the issue of whether a Federal Court, which has previously dismissed a case on the ground of forum non conveniens, can enjoin the subsequent prosecution of the same case in state court; f) subsequently, the Supreme Court did grant Writ of Certiorari in such a case, Chick Kam Choo v. Exxon Corp., and the Supreme Court of the United States, in 1988, handed down its decision, holding that a federal court, which has previously dismissed a case on the ground of forum non conveniens, cannot enjoin such case when it is subsequently

filed in state court, see 108 S.Ct 1684 (1988) (copy attached): g) despite the Supreme Court decision, the Federal District Court thereafter granted the permanent injunction which is attached to Defendants recent Motion to Dismiss in this case; h) the Plaintiffs have filed, in the Federal Court, a Rule 60(b) Motion, the purpose of which is to seek to have the Federal Court, in compliance with the mandate in Chick Kam Choo, to dissolve the injunction and/or to reinstate the federal case and stay it pending a decision in the cases before the Supreme Court of the United States and the Texas Supreme Court, as discussed below.

Good cause exists with respect to retaining this case upon the docket because of the stay, and then the injunction, which has been in force and effect in the Federal Court, and which has thus made prosecution in this Court untenable. Moreover, on August 30, 1991, the Defendants moved to abate the proceedings in this Court, on the basis of the proceedings in the Federal Court. For all of the foregoing reasons, it is clear that good cause exists for retaining this case upon the docket and the Plaintiff now requests the Court, once this case is reinstated, to retain same upon the docket.

III.

Response to the Motion to Dismiss of Defendants

The Defendants should not have filed their Motion to Dismiss because of the pending the injunction granted by the Federal Court. However, since they have filed such a motion, Plaintiff is left with no choice but to respond. Obviously, the best course of action is for the Plaintiff to directly, in the Federal Court (rather than collaterally, in this Court), attack the permanent injunction order entered by the

Federal Court. There is no question that the Federal Court's permanent injunction is improper in view of Chick Kam Choo v. Exxon.

The essential basis of the Defendants motion for a permanent injunction in the Federal Court after the 1988 Chick Kam Choo decision was handed down, is that, because Mr. Manangkalangi's injuries occurred at sea, a so called "maritime" federal forum non conveniens doctrine preempts state forum non conveniens law. That contention is based upon the holding in Chick Kam Choo v. Exxon, 817 F.2d 307 (5th Cir. 1987) to the effect that such a "federal maritime form non conveniens doctrine" does not exist and that it does preempt. The Supreme Court, in reversing 817 F.2d 307, reversed the injunction portion of the decision, but pretermitted a decision upon the preemption portion of the decision. See decision attached.

To be sure, the Federal Court should have left the preemption issue to this Court rather than invading the province of this Court by enjoining it on the basis of the preemption doctrine. In any event, the Supreme Court of Texas now has before it that very issue, namely the issue of whether or not a federal "maritime" forum non conveniens doctrine preempts state forum non conveniens law in a maritime case. See Exxon Corp. v. Chick Kam Choo, Cause No. D-1693, Sup. Ct. of Texas. The present law of this state can be found in the Court of Appeals decision in that case, in which the court held that federal "maritime" forum non conveniens law does not preempt state forum non conveniens law. See 821 S.W.2d 190 (Tex, Civ. App. - 14th, Houston, 1991). Moreover, the holding by the Fifth Circuit in the reversed Chick Kam Choo case, that a special federal "maritime" forum non conveniens exists, seems to have been overruled by In Re Aircrash New Orleans, 821 F.2d 1147 (5th Cir. 1987) (en banc). In any event, that

precise issue is not pending before the Supreme Court of the United States in the case of American Dredging Co. v. Miller, No. 91-1950. It is pending there by way of a Grant of Writ of Certiorari from a decision of the Louisiana Supreme Court in the same case, see 595 So.2d 615 (La. S.Ct. 1992).

Therefore, as can be seen from the Rule 60(b) motion, we are requesting the Federal Court in this case, in view of the pending dispositive decisions by the courts of last resort of both Texas and the United States, to reinstate that case and defer action upon it pending the decision of the Supreme Court of the United States in American Dredging Co. v. Miller and/or the decision of the Supreme Court of Texas in Chick Kam Choo v. Exxon.

For the foregoing reasons, this Court should reinstate this case, and, at the very least, rescind the order granting the dismissal motion and stay all proceedings pending the disposition of the preemption issue in the Supreme Court of the United States and/or the Supreme Court of Texas.

IV.

Good Cause Exists for Reinstatement and the Court Should Reinstate

For all of the above reasons, it is clear that the Federal Court, in this case, was premature in granting a permanent injunction and that this Court was inadvertently in error in granting the dismissal motion of the Defendant.

In any event, there is no question but that Plaintiffs due process rights, the local rules of this Court, and the Texas Rules of Civil Procedure, have all been violated by virtue of the Court's action in granting the dismissal motion

without a submission date having ever been set, without notice to the Plaintiff, without a date having been set for response to be filed by Plaintiff, and without overall due process.

Therefore, it is clear that justice demands that this case be reinstated and that same be stayed pending the decision of the Federal District Court on our Rule 60(b) Motion, the Supreme Court of the United States in American Dredging Co. v. Miller and/or the Supreme Court of the State of Texas in Chick Kam Choo v. Exxon.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays as in the preceding paragraph.

Respectfully submitted,

/s/ Benton Musslewhite
BENTON MUSSLEWHITE
TBA#: 14752000
1250 Lyric Centre
440 Louisiana
Houston, Texas 77002
(713) 222-2288
(713) 222-0319 Fax

ATTORNEY FOR PLAINTIFF

APPENDIX F

IN THE UNITED STATE DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

READING & BATES PETROLEUM CO.; ET AL., Plaintiffs,	§	
	§	CIVIL ACTION
vs.	§	NO. H-86-2671
PETER MANANGKALANGI; ET AL. Defendants.	§	

RULE 60(b) MOTION

COMES NOW Defendants, and moves the Court to reinstate this cause under Rule 60(b), F.R.C.P., and dissolve the pending injunction, and for such motion would respectfully show the Court as follows:

I.

On March 3, 1992, the Court entered a order permanently enjoining the Plaintiffs from pursuing their state court action. However, it is undisputed that the Defendants have never had a trial on the merits, in this Court or in the state court. The basis for granting a permanent injunction is in conflict with Supreme Court law, Chick Kam Choo v. Exxon, 108 S.Ct 1684 (1988). The only possible basis for the Court, in the fact of Chick Kam Choo, to enjoin the Defendants in the state court action is the so called "maritime

forum non conveniens doctrine" which the Plaintiffs in this case have contended preempts state forum non conveniens law. See Chick Kam Choo v. Exxon, 817 F.2d 307 (5th Cir. 1987) rev'd on other gnds. 108 S.Ct. 1684 and Chick Kam Choo v. Exxon, 821 SW.2d 190 (14th Court - Hou-1991), writ pending D-1693, Supreme Court of Texas. However, that very issue is pending before the Supreme Court of the United States in American Dredging Company v. Miller, #91-1950 and that case is set for Argument on November 9, 1993 at 11:00 a.m.

II.

Defendants now request the Court to grant the reinstatement and hold this case on the docket, pending the decision of the Supreme Court of the United States in American Dredging. If the Court holds that there is a maritime forum non conveniens doctrine in federal court and that such doctrine does preempt state law, then the Court should reaffirm its dismissal with prejudice. However, if the Court in American Dredging holds that there is no such thing as the "maritime forum non conveniens doctrine" and/or that such doctrine does not preempt state forum non conveniens law, then this Court should immediately dissolve such permanent injunction and allow the Defendants to proceed in state court.

Respectfully submitted,

/s/ Julius Larry / jc with permission
JULIUS LARRY
Federal Bar # 14030
3730 Kirby, Suite 1180
Houston, Texas 77098
(713) 942-0320

ATTORNEY FOR DEFENDANTS

APPENDIX G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED
DEC 6 1993
MICHAEL N. MILBY, CLERK
BY DEPUTY: CK

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

READING & BATES PETROLEUM CO.; ET AL., Plaintiffs,	§	
vs.	§	CIVIL ACTION NO. H-86-2671
PETER MANANGKALANGI; ET AL., Defendants.	§	

ORDER

Came to be heard on this date Defendants' Rule 60(b) Motion for this Court to hold this case on the docket pending the decision of the United States Supreme Court in American Dredging Company v. Miller, #91-1950, and the Court being of the opinion that said motion should in all things be **denied**.

IT IS HEREBY ORDERED that **Defendants' Rule 60(b) Motion is DENIED**.

SIGNED this 4th day of December, 1993.

/s/ Ewing Werlein, J.
JUDGE PRESIDING